

Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOMBARDIER INC.,

Plaintiff,

v.

MITSUBISHI AIRCRAFT CORPORATION,  
MITSUBISHI AIRCRAFT CORPORATION  
AMERICA INC., AEROSPACE TESTING  
ENGINEERING & CERTIFICATION INC.,  
MICHEL KORWIN-SZYMANOWSKI,  
LAURUS BASSON, MARC-ANTOINE  
DELARCHE, CINDY DORNÉVAL, KEITH  
AYRE, AND JOHN AND/OR JANE DOES 1-  
88,

Defendants.

No. 2:18-cv-01543-JLR

BOMBARDIER INC.'S ANSWER  
TO MITSUBISHI AIRCRAFT  
CORPORATION'S  
COUNTERCLAIMS

Plaintiff Bombardier Inc. ("Plaintiff" or "Bombardier"), by and through its undersigned counsel, answers the Counterclaims filed on May 21, 2019 (Dkt. # 209) by Mitsubishi Aircraft Corporation ("MITAC" or "Defendant") as follows:

**ANSWER TO COUNTERCLAIMS**

**GENERAL DENIAL**

Unless expressly admitted below, Bombardier denies each and every allegation MITAC America has set forth in its Counterclaims, per Fed. R. Civ. P. 8(b)(3).

## RESPONSE TO MITAC'S SPECIFIC ALLEGATIONS

The numbered paragraphs below correspond to the numbered paragraphs in the Counterclaims.

### I. INTRODUCTION<sup>1</sup>

1. Since 2015, Bombardier has engaged in a multifaceted scheme to expand its power within the regional jet market by impeding the entrance of a new competing aircraft: the Mitsubishi Regional Jet (“MRJ”). Through a series of interrelated actions directed at MITAC and other companies and individuals involved in the MRJ’s development and certification, Bombardier has attempted to prevent or delay competition from the MRJ by denying access to a critical development input—the skill and know-how of experienced aerospace professionals—and by tainting the image of the MRJ among purchasers of regional jets. Bombardier’s anticompetitive aims are clear: to increase its market share and revenues by causing prospective MRJ customers to instead purchase Bombardier’s competing Canadair Regional Jets (“CRJs”) or extend the lives of in-service CRJs through the purchase of parts, maintenance, and other aftermarket services from Bombardier.

**Response to Paragraph 1:** Bombardier denies all allegations in Paragraph 1.

2. Bombardier’s scheme has included a series of actions intended to delay and disrupt the development, certification, and sale of the MRJ. Over the course of the past three years, Bombardier has: (1) levied baseless threats and accusations against MITAC and others involved in developing the MRJ—including Mitsubishi Aircraft Corporation America, Inc. (“MITAC America”), Mitsubishi Heavy Industries, Ltd. (“MHI”), Aerospace Testing Engineering & Certification, Inc. (“AeroTEC”), and those companies’ current and prospective employees—in order to restrict the free flow of skilled labor; (2) made threats against its own employees to deter them from accepting employment on the MRJ program; (3) attempted to

---

<sup>1</sup> For ease of reference, Bombardier has reproduced the headings MITAC used in its Counterclaims. To the extent these headings contain any allegations or characterizations, Bombardier denies the truth, if any, of those allegations or characterizations.

1 coerce MITAC, MITAC America, and AeroTEC to enter into per se unlawful no-poaching  
 2 agreements in order to undermine recruitment and hiring activities in support of the MRJ  
 3 program; (4) threatened the long-standing supply relationship between MHI and Bombardier  
 4 in an attempt to achieve its illicit ends; and (5) initiated this litigation in a further effort to  
 5 delay the MRJ program, undermine prospective customers' and suppliers' confidence in the  
 6 MRJ, and impair the efforts of MITAC and MITAC America to sell the MRJ during a critical  
 7 period for regional jet services.

8 **Response to Paragraph 2:** Bombardier denies all allegations in Paragraph 2.

9 3. The purported justifications for Bombardier's demands have changed over  
 10 time, but the purpose and intended effect of its conduct have been consistent, as demonstrated  
 11 by Bombardier's own statements confirming its intent to block competition from the MRJ.  
 12 This litigation is the latest in a series of efforts taken by Bombardier to blunt an emerging  
 13 competitive threat in an attempt to monopolize the regional jet market. Bombardier's  
 14 anticompetitive conduct violates the Sherman Act and the Washington Consumer Protection  
 15 Act.

16 **Response to Paragraph 3:** Bombardier denies all allegations in Paragraph 3.

## 17 II. THE PARTIES

18 4. Counterclaim Plaintiff MITAC is a Japanese corporation with its principal  
 19 place of business in Nagoya, Japan. MITAC is a subsidiary of MHI, also a Japanese  
 20 corporation. MITAC is the parent company of MITAC America, a Delaware corporation with  
 21 its principal place of business in Seattle, Washington. Together, these companies are referred  
 22 to herein as "Mitsubishi."

23 **Response to Paragraph 4:** Admitted to the extent that MITAC is a corporation  
 24 organized and existing under the laws of Japan, with its registered office and principal place  
 25 of business at Nagoya Airport, Toyoyama-cho, Nishikasugai-Gun, Aichi 480-0287, Japan.  
 26 Bombardier lacks knowledge or information sufficient to form a belief about the truth of the  
 27 remaining allegations in Paragraph 4 and therefore denies them.

5. Counterclaim Defendant Bombardier, on information and belief, is a corporation organized and existing under the laws of the province of Quebec, Canada, with its principal place of business in Montreal, Quebec, Canada.

**Response to Paragraph 5:** Admitted.

### III. JURISDICTION AND VENUE

6. MITAC brings its claims against Bombardier under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, and the Washington Consumer Protection Act, RCW ch. 19.86.

**Response to Paragraph 6:** Bombardier admits that MITAC purports to bring an action under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, and the Washington Consumer Protection Act, RCW ch. 19.86, but denies it has violated either the Sherman Act or the Washington Consumer Protection Act.

7. The Court has subject-matter jurisdiction over MITAC's counterclaims under 15 U.S.C. § 2 pursuant to 28 U.S.C. §§ 1331 and 1337. The Court has subject-matter jurisdiction over MITAC's counterclaims under Washington state law pursuant to 28 U.S.C. § 1367 because the state-law claims arise out of the same case or controversy as gives rise to MITAC's counterclaims under the Sherman Act.

**Response to Paragraph 7:** Paragraph 7 asserts legal conclusions to which no responses are required. To the extent responses are required, Bombardier denies all allegations in Paragraph 7.

8. The Court has personal jurisdiction over Bombardier because Bombardier consented to the Court's jurisdiction over it by filing this action in this Court and because Bombardier has committed unlawful acts within Washington that give rise to the causes of action alleged herein.

**Response to Paragraph 8:** Paragraph 8 asserts legal conclusions to which no responses are required. To the extent any response is required, Bombardier consents to the personal jurisdiction of this Court for the limited purposes of contesting MITAC's Counterclaims. Bombardier denies the remaining allegations in Paragraph 8.



1 turboprop airplanes nor existing jets were capable of meeting the market demand for fast,  
 2 efficient, quiet, and smooth midsize aircraft needed to service an increasing number of routes  
 3 worldwide. As the first jet capable of filling the gap between the operating capabilities of  
 4 short-haul turboprop airplanes and larger capacity, longer range jets, the CRJ100 quickly  
 5 surpassed analysts' sales expectations and established Bombardier's position as the leader in  
 6 the regional jet market.

7 **Response to Paragraph 11:** Admitted only that the CRJ100 entered service  
 8 in 1992. The remaining allegations of Paragraph 11 constitute opinion to which no response is  
 9 required. To the extent any response is required; Bombardier lacks knowledge or information  
 10 sufficient to form a belief as to the truth, if any, of the allegations and therefore denies them.

11 12. Bombardier was the sole manufacturer of regional jets until late 1996, when  
 12 Brazilian jet maker Embraer SA ("Embraer") delivered its first Embraer Regional Jet ("ERJ").  
 13 Since then, Bombardier and Embraer have dominated the market for regional jets, accounting  
 14 for 89% of in-service regional jets worldwide over the past decade, and as of 2018. British  
 15 Aerospace and Fokker briefly attempted to compete with Bombardier and Embraer in the  
 16 regional jet market, but neither succeeded in gaining a foothold and both ultimately ceased  
 17 manufacturing regional jets. Russian-based United Aircraft Corporation and Chinese state-  
 18 owned Commercial Aircraft Corporation of China have made some inroads in their home  
 19 markets but together only account for approximately 4% of in-service regional jets as of 2018.

20 **Response to Paragraph 12:** Bombardier lacks knowledge or information  
 21 sufficient to form a belief as to the truth, if any, of the allegations in Paragraph 12 and  
 22 therefore denies them.

23 13. The barriers faced by new entrants into the regional jet market are significant.  
 24 As explained further below, these barriers include the cost of developing a regional jet, the  
 25 complexity of the development and certification process, manufacturing requirements and  
 26 costs, the challenges of earning customer trust for a new aircraft, and the costs associated with  
 27 an airline's decision to switch to a new manufacturer's aircraft. Among the many barriers to

1 entry is the finite supply of engineers with the skills and know-how necessary to the  
2 development and certification of commercial jets. Restrictions on the mobility of employees  
3 with these specialized skills and know-how can serve as an additional barrier to entry.

4 **Response to Paragraph 13:** The allegations of Paragraph 13 constitute  
5 opinion to which no response is required; to the extent any response is required, Bombardier  
6 lacks knowledge or information sufficient to form a belief as to the truth, if any, of the  
7 allegations and therefore denies them.

8 14. Due to the limited supply and vital importance of engineers with specialized  
9 skills and know-how, aircraft manufacturers (including companies seeking to enter the  
10 market) frequently seek to recruit and hire such employees from other aerospace companies.  
11 For example, when Bombardier was developing its own expertise in support of certification of  
12 the CRJ100, it recruited heavily from British Aerospace, which at the time was a leading jet  
13 manufacturer. Similarly, in 1997—the year after Embraer began competing against  
14 Bombardier in the regional jet market—Bombardier recruited and hired at least a dozen  
15 engineers from Embraer. More recently, Bombardier hired at least 50 experienced  
16 aeronautical engineers from Embraer to work on the development of its CSeries family of  
17 narrowbody jets. On information and belief, Bombardier recruited and hired these Embraer  
18 employees so that Bombardier could benefit from the specialized skills and know-how that  
19 the employees had developed through their work on Embraer jets. On information and belief,  
20 Embraer likewise has hired skilled employees from Bombardier.

21 **Response to Paragraph 14:** Bombardier admits that aircraft manufacturers  
22 recruit and hire employees from other aerospace companies. Bombardier further admits that it  
23 and other aerospace companies have properly sought to recruit engineers with specialized  
24 skills and know-how in various aspects of aircraft development and design. Bombardier  
25 denies the allegation of Paragraph 14 to the extent they imply that Bombardier has engaged in  
26 recruiting and hiring practices that are improper or that have harmed a competitor. In addition,  
27



1 Bombardier denies the remaining allegations in Paragraph 14 because it lacks knowledge or  
2 information sufficient to form a belief as to the truth of those allegations, if any.

3 15. In March 2008, MHI announced the launch of a program to develop the MRJ,  
4 a next-generation regional jet that seeks to be the most efficient, comfortable, and reliable  
5 commercial aircraft of its type to ever take flight. MITAC and MITAC America were formed  
6 in 2008 to lead the MRJ program, including the development, marketing, and sale of the MRJ.  
7 The MRJ is being designed to burn 20% less fuel and make 40% less noise compared to  
8 existing regional jets. As such, the MRJ is expected to pose formidable competition to  
9 Bombardier in the regional jet market.

10 **Response to Paragraph 15:** Bombardier admits only that a program to  
11 develop the MRJ was announced in or about 2008. Bombardier lacks knowledge or  
12 information sufficient to form a belief as to the truth, if any, of the remaining allegations of  
13 Paragraph 15 and therefore denies them.

14 16. The MRJ is a “clean sheet” aircraft, which means the design is new, not based  
15 on a prior previously certified plane. Development and certification of a clean sheet aircraft is  
16 a complex, costly, and lengthy process. As Bombardier acknowledges in its first amended  
17 complaint, even experienced manufacturers typically spend several billion dollars and  
18 upwards of ten years bringing a clean sheet aircraft from concept and design to  
19 commercialization and flight. (*See* Dkt. 143 at ¶¶ 25-28.) Unexpected setbacks and delays  
20 during the development process are also not atypical. Certification flight testing of the MRJ is  
21 currently expected to begin in early 2019 with the MRJ entering into service in 2020.

22 **Response to Paragraph 16:** Bombardier admits that the MRJ is a clean sheet  
23 aircraft and that bringing a clean sheet aircraft from concept and design to commercialization  
24 and flight can be a complex and costly process. Paragraph 16 also contains characterizations  
25 of a document that speaks for itself. Bombardier lacks sufficient information to form a belief  
26 as to the truth, if any, of all other allegations of Paragraph 16 and therefore denies them.



1           17.     The MRJ will be the first all-new commercial jet developed in large part by a  
2 Japanese company since the 1960s. Consequently, at the time the MRJ program was  
3 launched, few individuals in Japan possessed expertise related to the development and  
4 certification of aircraft.

5           **Response to Paragraph 17:**           Paragraph 17 contains allegations that assume  
6 facts and future events, and on at least that basis, Bombardier denies the allegations in the first  
7 sentence of Paragraph 17. Bombardier lacks sufficient information as to the truth of the  
8 second sentence in Paragraph 17 and therefore denies it.

9           18.     To support their efforts to bring the MRJ to market, including by obtaining  
10 required certification from regulatory authorities in the United States, Japan, Canada, and  
11 Europe, MITAC and MITAC America have sought to obtain expert assistance from outside  
12 Japan. Since mid-2014, MITAC has partnered with AeroTEC, a company based in Seattle,  
13 Washington that specializes in the testing, engineering, and certification of aircraft for its  
14 clients. In July 2015, MITAC America opened its Seattle engineering center to assist in  
15 testing and certification efforts for the MRJ. The following summer, in August 2016, MITAC  
16 America opened a Flight Test Center in Moses Lake, Washington.

17           **Response to Paragraph 18:**           Bombardier admits the allegations in Paragraph  
18 18 to the extent that Bombardier is aware that MITAC and MITAC America have sought and  
19 obtained expert assistance from outside Japan to support their efforts to bring the MRJ to  
20 market. Bombardier further admits that MITAC purports to have partnered with AeroTEC.  
21 Bombardier lacks knowledge or information sufficient to form a belief as to the truth, if any,  
22 of all other allegations of Paragraph 18 and therefore denies them.

23           19.     In order to meet their human resources needs, MITAC, MITAC America, and  
24 AeroTEC have undertaken efforts to recruit and hire individuals with specialized skill and  
25 know-how related to the development and certification of regional jets.

26           **Response to Paragraph 19:**           Bombardier admits that the named entities have  
27 undertaken efforts to recruit and hire individuals with specialized skill and know-how related

1 to the development and certification of regional jets. Bombardier lacks knowledge or  
2 information sufficient to form a belief as to the truth, if any, of the remaining allegations of  
3 Paragraph 19 and therefore denies it.

4 20. As detailed further below, beginning in 2015, AeroTEC advertised that it was  
5 hiring for positions related to flight testing of the MRJ, held job fairs to identify potential  
6 candidates, and engaged in other recruitment activities both through recruiters and via direct  
7 communications with potential hires.

8 **Response to Paragraph 20:** Admitted that AeroTEC has engaged in  
9 substantial recruiting activity related to the MRJ. Bombardier lacks sufficient information to  
10 form a belief regarding any further allegations in Paragraph 20, such as when recruiting  
11 activities began.

12 21. In 2016, MITAC and MITAC America sought to recruit and hire over 200  
13 aircraft system engineers to work on certification activities of the MRJ aircraft. As part of  
14 their efforts, the companies held eight job fairs in cities throughout North America in 2016:  
15 Wichita, Kansas (May 6-7), Anaheim, California (June 18-19), Dallas, Texas (June 24-25),  
16 Montreal, Quebec (July 15-16), and Seattle, Washington (July 30-31, August 19-20, October  
17 28, and December 3). Those cities were chosen because each was well-known to be the home  
18 of sizeable aerospace companies and thus job fairs in those cities were expected to result in  
19 sizeable pools of qualified job applicants. Through the eight job fairs held in 2016, MITAC  
20 hired a total of 28 employees, 9 of whom had previously been employed by Bombardier.

21 **Response to Paragraph 21:** Admitted to the extent a) that in 2016 MITAC  
22 and MITAC America sought to recruit and hire engineers to work on certification activities of  
23 the MRJ aircraft, b) that MITAC and MITAC America organized a “job fair” in Montreal,  
24 Quebec for July 15-16, 2016, c) that the North American cities listed have aerospace  
25 companies, and d) that MITAC has hired individuals who worked at Bombardier. Bombardier  
26 lacks knowledge or information sufficient to form a belief as to the truth, if any, of all other  
27 allegations in Paragraph 21 and therefore denies them.

22. In addition to holding job fairs, MITAC and MITAC America have publicized job openings via the website LinkedIn.com and have engaged recruiting firms to identify job candidates. All told, MITAC and MITAC America have together recruited and hired candidates from the leading jet manufacturers (including Boeing, Airbus, and Embraer) as well as systems suppliers and government agencies.

**Response to Paragraph 22:** Admitted to the extent MITAC and MITAC America have engaged professional recruiting services to support their efforts to hire Bombardier employees and to the extent that ex-Boeing personnel were known to be in the employ of MITAC. Bombardier lacks knowledge or information sufficient to form a belief as to the truth, if any, of all other allegations in Paragraph 22 and therefore denies them.

23. The singular purpose of MITAC and MITAC America's recruiting efforts was to meet the human resources needs of the MRJ program. Neither MITAC nor MITAC America sought to disrupt or interfere with the business operations of Bombardier or any other company nor to acquire any company's proprietary intellectual property. Nor did MITAC or MITAC America believe that any such disruption or interference with Bombardier's operations was possible given Bombardier's immense size and its long history of experience with jet development and certification. On information and belief, AeroTEC's own recruiting efforts were similarly motivated only by its desire to meet its own human resources needs, not to disrupt the operations of Bombardier or any other company or to acquire any company's proprietary intellectual property.

**Response to Paragraph 23:** Bombardier denies all allegations contained in Paragraph 23.

## **B. Bombardier's Predatory Scheme to Thwart Competition in the Regional Jet Market**

24. Since late 2015, Bombardier has engaged in a multifaceted scheme to restrain competition in the regional jet market by impeding and delaying the development, certification, and sale of the MRJ. Bombardier's anticompetitive conduct has included a series of spurious and improper threats and allegations against Mitsubishi, AeroTEC, and former

1 and current Bombardier employees that were intended to prevent and impede competition  
 2 from the MRJ. Bombardier's attempts to prevent Mitsubishi and AeroTEC from hiring,  
 3 retaining, and utilizing highly-skilled individuals critical to the development and certification  
 4 of the MRJ have included its efforts to: coerce Mitsubishi and AeroTEC to enter per se illegal  
 5 no-poach agreements or otherwise refrain from the legitimate recruitment and hiring of  
 6 Bombardier employees (including via threats that the Bombardier-MHI supply relationship  
 7 would be threatened if Bombardier's illegal demands were not heeded); deter potential job  
 8 candidates from applying for or accepting employment related to the MRJ program; and limit  
 9 the ability of former Bombardier employees to perform legitimate job functions in support of  
 10 the MRJ effort. At the same time, Bombardier has attempted to impair Mitsubishi's reputation  
 11 and goodwill, including among current and potential MRJ customers and suppliers, by falsely  
 12 insinuating that the success of the MRJ program is dependent on misappropriated trade  
 13 secrets, thus sullyng the image of the MRJ and creating doubt and uncertainty about whether  
 14 the MRJ will be able to meet development and production deadlines and enter the market  
 15 notwithstanding Bombardier's lawsuit. All of these actions were taken as part of an  
 16 overarching plot to monopolize and reduce competition in the regional jet market.

17 **Response to Paragraph 24:** Bombardier denies all allegations in Paragraph  
 18 24.

19 25. Bombardier's efforts to undermine the development of the MRJ began no later  
 20 than October 22, 2015 when Bombardier's Director of Legal Services wrote to AeroTEC and  
 21 its Head of MRJ Flight Testing, Michel Korwin-Szymanowski, threatening to "institute legal  
 22 proceedings" unless AeroTEC and Mr. Korwin-Szymanowski ceased efforts to recruit  
 23 Bombardier and Learjet employees. (*See* Dkt. 105-1 at 5 (October 22, 2015 correspondence  
 24 between Bombardier and AeroTEC); Dkt. 1-11 (October 22, 2015 letter from Bombardier to  
 25 Korwin-Szymanowski).)

26 **Response to Paragraph 25:** Bombardier admits that on October 22, 2015,  
 27 Bombardier's Director of Legal Services wrote to AeroTEC's Head of MRJ Flight Testing,

1 Michel Korwin-Szymanowski. Paragraph 25 contains characterizations of documents and  
 2 written correspondence that speak for themselves. Bombardier denies any and all remaining  
 3 allegations in Paragraph 25.

4 26. Two days prior, on October 20, 2015, Mr. Korwin-Szymanowski had emailed  
 5 a “form letter” to hundreds of individuals with flight test experience, including but not limited  
 6 to former colleagues at Bombardier, regarding employment opportunities at AeroTEC and  
 7 recruiting and non-recruiting social events being held the following week in Wichita, Kansas  
 8 and Montreal, Canada. (*See* Dkt. 1-12 at 33-35.) These recruiting activities were aimed at  
 9 hiring qualified personnel to work on the MRJ program.

10 **Response to Paragraph 26:** Admitted that Bombardier filed as Dkt. # 1-12 a  
 11 copy of an email that Defendant Korwin-Szymanowski purportedly sent to 247 Bombardier  
 12 employees. Bombardier refers MITAC to Dkt. # 1-12 for the content contained therein.  
 13 Bombardier is without sufficient knowledge or information to form a belief as to the truth, if  
 14 any, of the other allegations in Paragraph 26 and therefore denies them.

15 27. Referencing Mr. Korwin-Szymanowski’s October 20, 2015 email, Bombardier  
 16 demanded that Mr. Korwin-Szymanowski and AeroTEC cancel events planned for October  
 17 22, 2015 and October 28, 2018 in Wichita and Montreal, respectively, and end the use of  
 18 “mobile truck signage with the mention ‘Now hiring in Seattle’ with interview dates and  
 19 times” in any area “around Bombardier and Learjet facilities.” Notwithstanding that Mr.  
 20 Korwin-Szymanowski was no longer employed by Bombardier and had never entered a post-  
 21 employment non-compete agreement, Bombardier asserted that Mr. Korwin-Szymanowski’s  
 22 recruitment activities “unquestionably constitute[] a breach of [his] confidentiality duty and  
 23 also a breach of contract.” Citing no authority, Bombardier asserted that “[c]ourts have  
 24 routinely reached the conclusion that former employees are not allowed to facilitate the piracy  
 25 of employees from their former employer” and that “[i]n these situations, employees and their  
 26 new employer are liable for the conspiracy to achieve such piracy.” (Dkt. 1-11.)  
 27

**Response to Paragraph 27:** Paragraph 27 contains characterizations of a document and written correspondence that speak for themselves. Bombardier admits that as of the time of the written correspondence, Bombardier did not employ Defendant Korwin-Szymanowski. Bombardier lacks knowledge sufficient to admit or deny the remaining allegations in Paragraph 27 and on that basis denies those allegations.

28. Although neither AeroTEC nor Mr. Korwin-Szymanowski had done anything improper, AeroTEC reluctantly conformed to Bombardier's demands, with AeroTEC's President Lee Human advising in an October 22, 2015 email that "1) Mr. Korwin-Szymanowski has been removed from this recruiting activity either directly or indirectly; 2) We have cancelled the social hour scheduled for tonight at Hangar 1; 3) We have moved recruitment trucks away from your facilities." (*See* Dkt. 105-1 at 2.) As Mr. Human later explained, AeroTEC "did not agree with Bombardier's claims of impropriety," but AeroTEC nevertheless "decided to cancel the impending social events and job fairs in Wichita and Montreal, and agreed Michel [Korwin-Szymanowski] would not contact any Bombardier employees going forward," in part because AeroTEC "had recently been invited by Bombardier to bid on a project . . . and we wanted to stay in their good graces." (Dkt. 66 at ¶ 5; *see also* Dkt. 60 at 3 ("AeroTEC did not, and does not, agree that Korwin-Szymanowski used or possessed any such confidential information, but in an attempt to work with Bombardier, AeroTEC agreed that he would no longer be involved with the recruiting activity.").)

**Response to Paragraph 28:** Denied that neither "AeroTEC nor Mr. Korwin-Szymanowski had done anything improper." Admitted that MITAC America attached as Exhibit A to its Counterclaims a purported copy of correspondence that Mr. Human sent to Bombardier. Admitted that Paragraph 28 appears to include quotations from a declaration purportedly by Mr. Human filed at Dkt. # 66 and from AeroTEC's Redacted Opposition to Bombardier's Motion for a Preliminary Injunction filed at Dkt. #60. To the extent that Paragraph 28 contains characterizations of documents, those documents speak for themselves.

1 Bombardier lacks knowledge sufficient to admit or deny the remaining allegations in  
2 Paragraph 28 and on that basis denies such allegations.

3 29. On or about February 12, 2016, AeroTEC informed Bombardier that it  
4 intended to restart its recruiting activities in the Montreal and Wichita areas. In response,  
5 Bombardier's Senior Director of Human Resources, Product Development Engineering stated  
6 that Bombardier was adamantly opposed to any such recruitment activities by AeroTEC. (*See*  
7 Dkt. 1-12 at 7.)

8 **Response to Paragraph 29:** The allegations in Paragraph 29 contain  
9 characterizations of a document that speaks for itself. Bombardier admits only that the  
10 referenced docket item purports to refer to an alleged communication from AeroTEC to  
11 Bombardier. Bombardier denies any remaining allegations in Paragraph 29 because it lacks  
12 knowledge or information sufficient to form a belief about the truth, if any, of the allegations.

13 30. On April 26, 2016, Bombardier escalated its threats towards AeroTEC and its  
14 employees when Bombardier's outside counsel, Peter Nohle of Jackson Lewis, sent a letter to  
15 AeroTEC's president threatening litigation against AeroTEC and the former Bombardier  
16 employees hired by AeroTEC unless, among other things, AeroTEC and the former  
17 Bombardier employees entered into no-poaching agreements pursuant to which they would  
18 not directly or indirectly communicate with or otherwise solicit "any current or recently  
19 departed employee of Bombardier regarding any employment or similar opportunities for  
20 work outside of Bombardier for a period of one year from the date of this Agreement." (*See*  
21 Dkt. 1-12.) The threats issued by Bombardier's outside counsel purported to be based on legal  
22 obligations and/or restrictions that Bombardier inaccurately claimed were applicable to its  
23 current and former employees by operation of Bombardier's Code of Ethics and Business  
24 Conduct, and on Bombardier's claim that the recruitment-related activities of two former  
25 Bombardier employees, Mr. Korwin-Szymanowski and Dale Goulding, created the risk of  
26 "substantial liability" for AeroTEC. Even if those propositions were correct (and they are  
27



not), they would provide no lawful basis for the wide-ranging and anticompetitive no-poaching agreement Bombardier demanded.

**Response to Paragraph 30:** The allegations in Paragraph 30 contain characterizations of a document that speaks for itself. Bombardier admits Paragraph 30 only to the extent that legal counsel acting on behalf of Bombardier wrote AeroTEC's president on April 26, 2016, to discuss Bombardier's Code of Ethics and Business Conduct and related obligations of former Bombardier employees hired by AeroTEC such as Mr. Korwin-Szymanowski and Mr. Goulding. Bombardier specifically denies the allegations of Paragraph 30 that state or imply that the letter constituted "threats" against AeroTEC or its employees; that Bombardier was demanding that AeroTEC enter into an anticompetitive no-poaching agreement; or that Bombardier engaged in any wrongdoing. To the extent there are any additional factual allegations in this paragraph, Bombardier denies any such allegations.

31. In early May 2016, outside counsel for AeroTEC responded to Bombardier's April 26 demand letter, and over the following months counsel for the companies discussed the terms of the additional no-poach agreement Bombardier requested. Ultimately, the companies did not execute any agreement.

**Response to Paragraph 31:** Admitted to the extent Bombardier and its counsel communicated with counsel for AeroTEC and that no agreement was reached. Bombardier denies any remaining allegations in Paragraph 31.

32. However, Bombardier's threats towards AeroTEC succeeded in their objective of continuing to deter AeroTEC's hiring of employees in support of the MRJ project. As stated in a June 3, 2016 letter from AeroTEC's president to Bombardier test pilot Ed Grabman, "AeroTEC does not agree with Bombardier's assertion that we cannot freely recruit employees of any background and the two companies are in the process of trying to work out their differences. Until this is accomplished, however, we are refraining from offering positions to any current employees of Bombardier." (Dkt. 105-1 at 8.) Thus, AeroTEC's ability to hire skilled labor for the MRJ program was impaired not only by the concessions

1 Bombardier had coerced AeroTEC to make, but also by Bombardier's subsequent threats of  
2 legal action against AeroTEC.

3 **Response to Paragraph 32:** The allegations in Paragraph 32 contain  
4 characterizations of a document that speaks for itself. Bombardier denies that the referenced  
5 letter or its content was the result of improper threats or any improper action asserted against  
6 AeroTEC, or that any such improper action occurred. Bombardier denies any other allegations  
7 in Paragraph 32.

8 33. Around this time, Bombardier began issuing similar threats to Mitsubishi. On  
9 June 3, 2016, Bombardier's Vice President of Contracts and Legal Services, Christian  
10 Poupart, sent an email to the Managing Counsel of MHI, Luke Walker, regarding  
11 Bombardier's "concern[]" that "AeroTEC . . . has recently been soliciting and recruiting a  
12 number of key employees from our Flight [T]est Center, despite being asked by us on  
13 numerous occasions to cease and desist from that practice" and that "some of these former  
14 Bombardier employees have been transferred to MHI or are working on the MRJ flight test  
15 program." (Dkt. 1-14.) Alluding vaguely to the "concern[]" that undefined "Bombardier  
16 proprietary methods and know-how" would "inevitably be transferred and used by AeroTEC  
17 or MHI for the purpose of their flight testing activities," Mr. Poupart requested Mr. Walker's  
18 "assistance in ensuring that this practice of soliciting and hiring Bombardier key flight testing  
19 employees ceases immediately . . . ." In response, Mr. Walker requested that Mr. Poupart  
20 provide "the non-solicitation agreement that Bombardier believes prohibits AeroTEC from  
21 recruiting Bombardier employees" in addition to "any of the correspondence that you have  
22 had with AeroTEC." Mr. Poupart did not respond to Mr. Walker's request.

23 **Response to Paragraph 33:** The allegations in Paragraph 33 contain  
24 characterizations of documents which speak for themselves. Bombardier admits Paragraph 33  
25 to the extent that Mr. Poupart emailed Mr. Walker of MHI on June 3, 2016, relative to  
26 concerns involving the recruiting activities of AeroTEC and that Mr. Walker replied two days  
27 later. *See* Dkt. # 1-14 at 2. Bombardier denies that Mr. Poupart's email constituted "threats" to

1 Mitsubishi or that the email did not clearly express concerns relating to “Bombardier  
2 proprietary methods and know-how.” Bombardier denies any remaining allegations in  
3 Paragraph 33.

4 34. On July 14, 2016, Mr. Poupart sent a letter to Mr. Walker expressing  
5 objections to a job fair scheduled to take place over the following two days in Montreal. (Dkt.  
6 1-15.) As indicated in the newspaper advertisement for the job fair referenced in Mr.  
7 Poupart’s letter, MITAC was at that point “looking to hire over 200 Aircraft Systems  
8 Engineers who can work on Certification activities for MRJ aircraft in Japan.” (Dkt. 1-10 at  
9 134-35.) After acknowledging the lawful intent of the job fair and that the promotional  
10 materials were not “directly aimed at Bombardier employees,” Mr. Poupart nevertheless  
11 insinuated that Mitsubishi’s holding of the job fair was illegal. Without citation to authority or  
12 explanation of how Mitsubishi’s conduct was wrongful, Mr. Poupart claimed that “[c]ourts  
13 have routinely reached the conclusion that massive solicitation that cause (sic) irreversible  
14 damages to a business is prohibited. In these situations, employees and their new employer  
15 can be held jointly liable for the prejudice caused by such practice.” Then, without contending  
16 or suggesting that any previously-departed Bombardier employee had in fact misappropriated  
17 any Bombardier intellectual property, Mr. Poupart “remind[ed]” Mr. Walker that any such  
18 hypothetical misappropriation would be wrongful. Mr. Poupart concluded by stating that  
19 “[w]e trust you understand the seriousness of the situation and ask that MHI refrains from  
20 engaging in any illegal activity that could cause Bombardier to suffer damages, failing which  
21 we reserve all of our rights against MHI, including our right to institute legal proceeding (sic)  
22 against MHI without any further notice.”

23 **Response to Paragraph 34:** The allegations in Paragraph 34 contain  
24 characterizations of a document that speaks for itself. Admitted to the extent that on July 14,  
25 2016, Mr. Poupart sent a letter to Mr. Walker discussing a job fair scheduled to take place  
26 over the following two days in Montreal. *See* Dkt. # 1-15 at 2. Bombardier denies that Mr.  
27 Poupart expressed objections to the holding of the job fair or that he “insinuated that

1 Mitsubishi's holding of the job fair was illegal." Bombardier denies any remaining allegations  
2 of Paragraph 34.

3 35. Three weeks later, Bombardier escalated its threats against MHI. On August 5,  
4 2016, Alain Bellemare, the President and Chief Executive Officer of Bombardier, sent a letter  
5 to Hideaki Omiya, the Chairman of the Board of MHI, in which he described the two  
6 companies' partnership "on various aircraft programs for several decades" and how they have  
7 "had to face and resolve several issues in order to continue enjoying a mutually beneficial  
8 relationship." (Dkt. 1-16.) After making a request for MHI's cooperation on certain payment  
9 terms related to the companies' supply contract, Mr. Bellemare referred Mr. Omiya to an  
10 attached letter—Mr. Poupart's July 14, 2016, letter to Mr. Walker—and implicitly threatened  
11 the continuation of the supply relationship between Bombardier and MHI unless MHI ceased  
12 the solicitation of Bombardier employees. Mr. Bellemare wrote: "You will appreciate the fact  
13 that the relationship between our two companies must be based on trust. As key suppliers, we  
14 expect Mitsubishi not to cause harm to Bombardier by engaging in massive solicitation of our  
15 engineers." The letter concluded with the not-so-subtle threat that "[t]he long standing  
16 partnership between Bombardier and MHI has been a successful one and I trust that MHI will  
17 continue to be [a] key supplier and will support Bombardier in light of the current market  
18 conditions."

19 **Response to Paragraph 35:** The allegations in Paragraph 35 contain  
20 characterizations of a document that speaks for itself. Bombardier admits that on August 5,  
21 2016, Mr. Bellemare sent a letter to Mr. Omiya. Bombardier specifically denies that the letter  
22 constituted a "threat" to MHI or that Bombardier otherwise engaged in improper conduct.  
23 Bombardier further denies any remaining allegations in this paragraph.

24 36. In response to Mr. Bellemare's letter, on August 22, 2016, Hiromichi  
25 Morimoto, the President of MITAC, wrote to Mr. Bellemare to acknowledge that MITAC was  
26 "currently engaged in an aircraft development program in Japan and North America and due  
27 to our need for qualified engineers, we have recently carried out various recruiting activities,

1 including job fairs, in several North American cities with an aviation industry presence.”  
 2 (Dkt. 105-1 at 11.) He went on to assure Mr. Bellemare that MITAC was acting within the  
 3 law and not attempting to harm Bombardier’s business:

4 We are confident that all our recruiting activities held, or to be  
 5 held, fully comply with all applicable laws and regulations, and  
 6 moreover, should be considered routine and customary for any  
 7 company in our industry seeking qualified employees. With  
 8 respect to your concerns, please be assured that these recruiting  
 9 activities were not and are not intended to harm or target  
 10 Bombardier’s business. Further, Mitsubishi Aircraft  
 Corporation, like MHI and all other MHI group companies, has  
 a strong commitment to respect the intellectual property rights  
 of all third parties, and we take appropriate measures in this  
 respect with all new employees.

11 **Response to Paragraph 36:** The allegations in Paragraph 36 contain  
 12 characterizations of a document that speaks for itself. Bombardier admits receipt of the letter  
 13 referenced in Paragraph 36. Bombardier denies any remaining allegations in this paragraph.

14 37. Mr. Bellemare did not reply to Mr. Morimoto’s letter or otherwise respond to  
 15 MITAC. Instead, Mr. Bellemare opted to send a second letter to the Chairman of the Board of  
 16 MHI, again implicitly threatening the MHI-Bombardier supply relationship on the basis of  
 17 MITAC’s lawful efforts to compete with Bombardier. (Dkt. 1-17.) In a January 27, 2017 letter  
 18 to Mr. Omiya, Mr. Bellemare complained that “despite my [August 5, 2016] letter . . . MHI  
 19 continues to actively solicit and hire key employees of Bombardier.” Without evidence or  
 20 explanation—but with an acknowledgement that Bombardier’s fear of competition in the  
 21 regional jet market underpinned its threats—Mr. Bellemare asserted that “we have reasons to  
 22 believe that the employees recruited by MHI will use the intellectual property owned by  
 23 Bombardier to assist MHI in developing the MRJ aircraft which will compete against  
 24 Bombardier aircraft” and requested that Mr. Omiya “[t]ake note that my team is instructed to  
 25 take all necessary actions to ensure the protection of the intellectual property of Bombardier  
 26 and its know-how.” Mr. Bellemare concluded by again implicitly threatening the MHI-  
 27

1 Bombardier supply relationship should MITAC's lawful hiring activities continue, stating that  
 2 "[i]n light of the long standing partnership between our corporations, I trust that I can count  
 3 on your cooperation in putting an end to the solicitation of our employees by MHI."

4 **Response to Paragraph 37:** The allegations in Paragraph 37 contain  
 5 characterizations of a document that speaks for itself. Bombardier admits Mr. Bellemare sent  
 6 a letter to MHI. Dkt. # 1-17. Bombardier denies it was sent instead of responding to Mr.  
 7 Morimoto's August 22, 2016 letter. Paragraph 37 is also denied to the extent the allegations  
 8 maintain that Bombardier made threats, acted out of fear, lacked evidence or explanation, or  
 9 otherwise acted improperly. Bombardier denies any remaining allegations in this paragraph.

10 38. Bombardier's threats to the MHI-Bombardier supply relationship—and its  
 11 acknowledgment that potential competition from the MRJ animated those threats—did not  
 12 emanate only from its President and CEO. On August 30, 2016, Bombardier's Chief  
 13 Procurement Officer, Nico Buchholz, issued similar threats to the President of MHI Canada  
 14 Aerospace, Inc., Mike McCarthy. (Dkt. 105-1 at 13.) After noting that MHI was a "valued  
 15 supplier of Bombardier," Mr. Buchholz complained that MHI "has been recruiting several  
 16 Bombardier employees to work on the MRJ program" and that this recruitment was "contrary  
 17 to what we expect from a long term business partner such as MHI." The letter made clear that  
 18 Bombardier feared the competition posed by the MRJ, and that the competition was the  
 19 primary basis for the company's threats and demands. According to Mr. Buchholz,  
 20 Mitsubishi's hiring activity "raises serious concerns that valuable knowledge and know-how  
 21 will be transferred to MHI and put to use to accelerate the development and entry of the MRJ  
 22 aircraft which will compete with our commercial aircraft programs." Mr. Buchholz stated that  
 23 Bombardier had "notified MHI's head office of this issue and have asked that MHI refrain  
 24 from hiring Bombardier employees. Unfortunately, our request seems to have been ignored.  
 25 I'm asking your assistance in getting this issue permanently resolved: MHI, as a valued  
 26 supplier to Bombardier, must stop recruiting Bombardier employees. I trust that you  
 27 understand the seriousness of the situation and that I can count on your cooperation."

1           **Response to Paragraph 38:**           The allegations in Paragraph 38 contain  
 2 characterizations of a document that speaks for itself. Bombardier admits Mr. Buchholz sent  
 3 an email to Mr. McCarthy, but denies that it was a threat animated by potential competition  
 4 from the MRJ or was otherwise improper. Bombardier denies any remaining allegations in  
 5 this paragraph.

6           39. In early 2017, Bombardier again escalated its pressure and threats against  
 7 Mitsubishi, this time through outside counsel. In a “Letter of Demand” dated February 17,  
 8 2017 and addressed to Mr. Morimoto of MITAC, Marianne Plamondon of the Norton Rose  
 9 Fulbright law firm formally demanded that the solicitation of Bombardier employees cease.  
 10 (Dkt. 1-18.) Ms. Plamondon asserted that “by targeting and soliciting key employees at  
 11 Bombardier[,] Mitsubishi is (i) knowingly destabilising Bombardier’s aircraft activities which  
 12 constitutes unfair competition and (ii) acquiring proprietary information belonging to  
 13 Bombardier to accelerate the development and entry into service of the MRJ aircraft.” The  
 14 letter identified 26 former Bombardier Product Development and Engineering employees who  
 15 had allegedly been hired directly or indirectly by Mitsubishi since the summer of 2015,  
 16 claiming that “Mitsubishi continues to target and solicit key employees who possess  
 17 confidential information essential to the development of the MRJ program and to meeting  
 18 certification requirements.” While acknowledging that the recruited employees in question  
 19 possessed skills and abilities important to Mitsubishi’s effort to compete in the regional jet  
 20 market, Ms. Plamondon attempted to portray that recruitment as an attack on Bombardier,  
 21 asserting that Mitsubishi’s “solicitation of Bombardier’s employees [was] an attempt to  
 22 destabilise and disrupt the internal affairs of a competitor, and obstruct their activities and  
 23 aircraft development and launch,” claiming that this “constitutes illegal and unfair  
 24 competition towards Bombardier and engages Mitsubishi’s liability and the liability of  
 25 Bombardier’s former employees towards Bombardier.” Ms. Plamondon explicitly  
 26 acknowledged that the employees’ own “know-how” was valuable to Mitsubishi, but  
 27 nonetheless she appeared to believe that merely by hiring highly-skilled and specialized



1 engineers and test pilots from Bombardier, Mitsubishi was acquiring “trade secrets” and  
 2 “proprietary information” belonging to Bombardier. According to Ms. Plamondon:

3           The employees targeted by Mitsubishi are highly skilled and  
 4           specialized engineers and test pilots, many of whom held key  
 5           positions during their employment at Bombardier. More  
 6           importantly, the know-how and trade secrets acquired by these  
 7           employees can hardly be acquired outside the context of the  
 8           development of new aircraft programs. This information is both  
 9           rare and extremely valuable. We have every reason to believe  
           these employees are now assigned to the MRJ program, which  
           raises important questions regarding the disclosure of  
           proprietary information, especially in the wake of recent press  
           highlighting Mitsubishi’s difficulties and lack of expertise.

10          The letter warned Mitsubishi that unless it took “immediate corrective action,” Bombardier  
 11          “will have no other option than to take more formal legal action” against it. Bombardier  
 12          demanded that Mitsubishi “immediately cease any behavior which constitutes unfair  
 13          competition”—behavior that, although not explicitly defined, was evident from the remainder  
 14          of the letter to mean the hiring of Bombardier employees. Bombardier also demanded that  
 15          Mitsubishi “[r]equire all former employees of Bombardier to sign agreements undertaking not  
 16          to solicit employees of Bombardier” and to “[t]ake any and all necessary measures to ensure  
 17          that the agreements are respected by former employees of Bombardier and inform  
 18          Bombardier of such measures.” The letter concluded by demanding that Mitsubishi confirm in  
 19          writing by February 28, 2017 that it would accede to Bombardier’s no-poach agreement.

20               **Response to Paragraph 39:**           The allegations in Paragraph 39 contain  
 21          characterizations of a document that speaks for itself. Bombardier admits that counsel for  
 22          Bombardier sent a letter to Mr. Morimoto of MITAC. Bombardier denies the allegations of  
 23          Paragraph 39 relative to the letter being a “threat” or being otherwise improper. Bombardier  
 24          denies the remaining allegations in this paragraph.

25               40.       Bombardier’s over-the-top accusations about the “destabilization” of its  
 26          business through the loss of a few dozen employees were not only unsupported by any facts  
 27

1 set forth in Ms. Plamondon's letter, they were also demonstrably false. Indeed, Ms.  
 2 Plamondon made no mention that Bombardier was laying off substantial numbers of its own  
 3 employees at the same time, including many of its most important employees in its aircraft  
 4 business. For example, as reported in news media:

- 5 • In 2014, well before the first recruiting activity by AeroTEC,  
 6 Bombardier eliminated 2,900 positions worldwide.
- 7 • In May 2015, Bombardier announced that it was cutting 1,750  
 8 jobs, including 1,000 positions at the company's facility in  
 9 Montreal and 480 at its facility in Toronto. Positions eliminated  
 in 2015 would eventually total 2,750.
- 10 • In February 2016, Bombardier announced that it would cut 10  
 11 percent of its workforce over two years.
- 12 • In October 2016, Bombardier cut 7,500 positions worldwide,  
 13 including 1,500 in Quebec. This itself constituted more than 10  
 percent of Bombardier's worldwide workforce.
- 14 • In February 2017—the very month of Ms. Plamondon's letter—  
 15 Bombardier announced that it would be eliminating another  
 16 7,000 positions worldwide, including 2,800 in Canada (more  
 17 than 10 percent of its remaining Canadian workforce) and 220  
 in Wichita. Of these 7,000 positions, all but 150 would be in  
 product development and engineering.

18 In light of these substantial and ongoing job cuts, it is implausible that MITAC's recruitment  
 19 and hiring of 26 employees could “destabilize” Bombardier, particularly given Bombardier's  
 20 vast size. According to Bombardier's first amended complaint in this litigation, Bombardier  
 21 employs over 69,000 persons worldwide—even after the significant job cuts over the past  
 22 several years—including more than 29,000 persons who work in Bombardier's Aerospace  
 23 division. (*See* Dkt. 143 at 9.)

24 **Response to Paragraph 40:** Bombardier admits that during the relevant time  
 25 there was a reduction in its workforce but denies all remaining allegations in Paragraph 40.

26 41. MITAC refused to accede to Bombardier's anticompetitive demands. By letter  
 27 dated March 9, 2017, MITAC's outside counsel, W. Jay DeVecchio of Morrison Foerster,

1 rejected the accusations in Ms. Plamondon's letter and explained that MITAC would not enter  
2 an agreement with Bombardier in violation of the antitrust laws. (Dkt. 105-1 at 15-18.) As Mr.  
3 DeVecchio explained:

4 MITAC has not acted improperly in any way in connection with  
5 its hiring activities. MITAC has no legal or other obligation to  
6 Bombardier to refrain from exploring free-market hiring  
7 opportunities with potential employees. Furthermore, to engage  
8 in any such no-poaching agreement with Bombardier could  
9 create potential antitrust liability for both MITAC and  
Bombardier. MITAC accordingly strongly urges Bombardier to  
cease its repeated attempts to induce MITAC into such an  
agreement.

10 To be clear, MITAC's only intent in its hiring activities is to  
11 meet its human resources needs. MITAC does not have any  
12 intent to destabilize Bombardier's aircraft activities, to acquire  
Bombardier's proprietary information, or otherwise to harm  
Bombardier in any way.

13  
14 Mr. DeVecchio continued, emphasizing the lack of factual support for  
15 Bombardier's assertions:

16 Bombardier unjustifiably accuses MITAC of soliciting key  
17 employees at Bombardier to "knowingly destabili[ze]  
18 Bombardier's aircraft activities" and "acquir[e] proprietary  
19 information belonging to Bombardier." Bombardier ascribes  
20 these motives to MITAC without providing any support,  
21 pointing only to the fact that MITAC, at times, has hired  
22 employees who previously worked for Bombardier. However,  
23 the fact that some of MITAC's employees have previously  
24 worked for Bombardier is hardly surprising, as both companies  
25 rely on a relatively limited pool of highly-skilled and  
26 specialized engineers to support their product lines. Bombardier  
27 also speculates that MITAC held a job fair in Montreal for the  
sole purpose of soliciting Bombardier employees, despite  
Montreal's being one of the top five largest hubs for aerospace  
jobs in North America. MITAC estimates that three-fourths of  
the nearly 150 attendees were not employed by Bombardier. We  
also note that MITAC held job fairs in various other North  
American cities for the same recruiting reasons as mentioned  
above.

1 In any event, MITAC is free to explore hiring possibilities with  
2 whomever it pleases, regardless of any past or present  
3 employment by Bombardier, absent a Bombardier employee's  
4 raising an express, written employment agreement restriction by  
5 Bombardier against future employment by MITAC. We are  
6 unaware of any such enforceable "noncompete" agreements,  
7 and you have conspicuously failed to mention any.

8 Mr. DeVecchio then responded to Bombardier's speculative allegations that the hiring of  
9 Bombardier employees was part of a plot to improperly acquire Bombardier's trade secrets  
10 and proprietary information:

11 Bombardier expresses its concern that former Bombardier  
12 employees might disclose Bombardier's proprietary information  
13 or trade secrets, although Bombardier does not identify a single  
14 instance where such information was divulged or used, nor  
15 indeed does Bombardier identify with any specificity any trade  
16 secrets the former employees might usurp. Lacking these facts,  
17 Bombardier attempts to support its speculation by referring to a  
18 MITAC press release and two news articles that indicate  
19 MITAC currently is working to meet certification requirements  
20 for its MRJ aircraft. Certification requirements, however, are  
21 published in regulations and publicly available. Therefore, this  
22 assertion rests on two equally implausible premises: First, that  
23 only Bombardier engineers have the know-how and information  
24 necessary to meet these governmental and industry-wide  
25 certification standards; and second that knowledge of these  
26 certification standards is a trade secret of Bombardier. Neither  
27 of these premises is accurate.

Without any allegation, much less fact, that particular and  
specifically-identified Bombardier trade secrets exist that are  
being or are threatened to be disclosed, Bombardier is left only  
with the implication that employees are not allowed to carry  
general know-how with them in their new employment  
endeavors. This is contrary to common sense and experience,  
and certainly is not the law.

After observing that Bombardier had failed to respond to MITAC's requests to specifically  
identify former employees improperly disclosing Bombardier's trade secrets or breaching

1 confidential or nondisclosure agreements, Mr. DeVecchio explained the procedures that  
2 MITAC employs to prevent such disclosures:

3 New employees are instructed not to bring any proprietary  
4 information or materials from their former employers, and they  
5 are further instructed not to use, release, or disclose any such  
6 information in the course of their employment at MITAC.  
7 These requirements also are embedded in MITAC's Code of  
8 Ethics. Indeed, many if not all of Bombardier's former  
employees were specifically admonished not to bring over,  
disclose, or otherwise misappropriate Bombardier trade secrets  
or confidential information.

9 Finally, Mr. DeVecchio noted the lack of a legal basis for Bombardier's demands and further  
10 explained that the agreement Bombardier was seeking from MITAC likely was illegal:

11 MITAC has no legal obligation to cease soliciting or hiring  
12 Bombardier's employees. Yet, as your letter notes, Bombardier  
13 repeatedly has attempted to induce MITAC to agree not to  
14 solicit or not to hire Bombardier's employees. In doing so,  
15 Bombardier has not identified any lawful basis for restricting  
16 competition between Bombardier and MITAC in hiring  
17 employees. Conversely, the U.S. Department of Justice and  
18 Federal Trade Commission recently issued formal guidance  
19 instructing that such agreements may be unlawful. This  
guidance instructs businesses that "[a]n individual is likely  
breaking the antitrust law if he or she ... agrees with  
individual(s) at another company to refuse to solicit or hire that  
other company's employees (so-called "no poaching"  
agreements)." *See*

20 <https://www.justice.gov/atr/file/903511/download> at 3, 6. This  
21 is not a hypothetical concern. The Justice Department has  
22 brought several actions, including two cases in which at least  
23 one company "agreed to limit its hiring of employees who  
24 currently work at a competitor." *Id.* at 4 (note that both cases  
involved the hiring of "highly skilled and specialized  
engineers"). The agency further warns that it "will criminally  
investigate allegations that employers have agreed among  
themselves ... not to solicit or hire each others' employees," and  
that naked "no-poaching" agreements could expose the  
companies involved to "substantial criminal and civil liability."  
26 *Id.* at 4, 6.

**Response to Paragraph 41:** The allegations in Paragraph 41 contain characterizations of a document that speaks for itself. Bombardier admits receipt of the March 9, 2017 letter sent by MITAC's outside counsel, but denies that it had been, or was, attempting to enter into an agreement in violation of the antitrust laws. Bombardier further denies that it had unjustifiably accused MITAC of improper solicitation of key Bombardier employees, or otherwise engaged in improper conduct. Bombardier denies any remaining allegations in Paragraph 41.

42. By letter dated April 12, 2017, Ms. Plamondon responded to Mr. DeVecchio's letter, accusing Mr. DeVecchio of acting inappropriately and in bad faith by requesting factual support for Bombardier's assertion that MITAC's hiring practices were destabilizing Bombardier's business or were otherwise unlawful. (Dkt. 105-1 at 20-22.) Rather than provide any such evidence of "destabilization" of Bombardier, Ms. Plamondon suggested that because the employees in question were important to MITAC's certification efforts, the hiring of these individuals necessarily constituted "unfair competition." Tellingly, Ms. Plamondon again made no mention that Bombardier had been laying off its own employees or that its CSeries aircraft, the CS100 and CS300, had already been awarded certification. Misstating the law—and making clear that Bombardier's primary concern was not the "destabilization" of its business but rather competition from the MRJ—Ms. Plamondon wrote that "We reiterate that the targeting by MITAC of Bombardier's employees for a project which is in direct competition with Bombardier's activities is clearly unfair competition under Quebec law" and falsely accused MITAC of engaging in the "unlawful misappropriation of Bombardier's competitive advantage." Ms. Plamondon did not dispute that the no-poaching agreement demanded by Bombardier would violate the U.S. antitrust laws. Instead, she stated Bombardier's view that the Sherman Act is "not directly applicable in Canada" and claimed that the demanded agreement was not a per se violation of Canada's Competition Act. The letter concluded by reiterating Bombardier's threat that "any further solicitation of

1 Bombardier's employees by MITAC at this stage with the aim of further destabilising  
2 Bombardier's activities will be firmly contested."

3 **Response to Paragraph 42:** The allegations in Paragraph 42 contain  
4 characterizations of a document that speaks for itself. Bombardier admits Ms. Plamondon  
5 responded to Mr. DeVecchio's letter on April 12, 2017 and that Exhibit F of Defendant's  
6 Counterclaim is a copy of that letter. Bombardier: (1) denies that the letter accuses Mr.  
7 DeVecchio of "acting inappropriately and in bad faith by requesting factual support for  
8 Bombardier's assertion that MITAC's hiring practices were destabilizing;" (2) denies that the  
9 letter misstates the law of Quebec, (3) denies that the letter "falsely accused MITAC of  
10 engaging in the 'unlawful misappropriation of Bombardier's competitive advantage,'" and (4)  
11 denies that Bombardier otherwise acted improperly. Bombardier denies any remaining  
12 allegations in Paragraph 42.

13 43. Mr. DeVecchio responded on behalf of MITAC on May 1, 2017, writing to  
14 Ms. Plamondon: "We have received your response of April 12, 2017, and disagree with and  
15 reject every assertion you have made about MITAC's actions and motivations. Although we  
16 are always available for constructive discussions, MITAC has done nothing wrong, and we  
17 consider this matter to be closed." (Dkt. 105-1 at 24.)

18 **Response to Paragraph 43:** The allegations in Paragraph 43 contain  
19 characterizations of a document that speaks for itself. Bombardier admits receipt of a letter  
20 from Mr. DeVecchio and admits that Paragraph 43 accurately recites language from that  
21 letter. Bombardier disagrees with the conclusions of the letter and denies the remainder of  
22 Paragraph 43.

23 44. Bombardier's attempts to prevent Mitsubishi and AeroTEC from exercising  
24 their right to recruit and hire Bombardier employees were not limited to its baseless threats  
25 against the companies. Rather, in parallel with those threats, Bombardier sent dozens of  
26 threatening letters to former Bombardier employees and individuals considering employment  
27 opportunities in connection with the MRJ program. On March 2-3, 2017, Bombardier,



1 through its outside counsel at Norton Rose Fulbright, sent a “letter of demand” to no fewer  
 2 than 37 former Bombardier employees. (*See, e.g.*, Dkt. 105-1 at 26-28.) Similar letters were  
 3 sent to no fewer than four other former Bombardier employees on April 13, 2017. (*See, e.g.*,  
 4 Dkt. 105-1 at 30- 33.) The letters contended that the former employees were in possession of  
 5 undefined “confidential information” that the individuals were purportedly “obligated  
 6 contractually and legally to protect.” Noting that “MITAC carries on activities that compete  
 7 directly with the activities of Bombardier,” the letters stated that the former employees were  
 8 obligated, among other things, “not to solicit, directly or indirectly, our client’s employees in  
 9 order to induce them to leave.” The letters concluded by stating that “Should you fail to  
 10 comply fully with all of your contractual and legal obligations, our client has instructed us to  
 11 institute against you, without further notice or delay, any and all legal proceedings as are  
 12 appropriate and necessary, including injunction proceedings . . . DO GOVERN YOURSELF  
 13 ACCORDINGLY.”

14       **Response to Paragraph 44:**       The allegations in Paragraph 44 contain  
 15 characterizations of documents that speak for themselves. Bombardier admits Exhibits H and  
 16 I are copies of letters sent by its outside counsel to former employees, but denies that the  
 17 referenced exhibits evidence the number of employees to whom letters were sent. Bombardier  
 18 specifically denies it made, or was making “baseless threats against the companies,” and  
 19 further specifically denies the referenced exhibits (or any other letters to former Bombardier  
 20 employees and individuals considering employment opportunities in connection with the MRJ  
 21 program) constituted “threats,” an improper “letter of demand,” or were otherwise improper.  
 22 Bombardier denies the remaining allegations in this paragraph to the extent they suggest or  
 23 imply that Bombardier was not acting within the purview of the law of competition. To the  
 24 extent there are any further allegations in this paragraph, they are denied.

25       45. Bombardier also issued ultimatums to its own employees that led those  
 26 employees to delay the start of their employment on the MRJ project. For example, on  
 27 February 17, 2017, Andrius Knystautas, then a Principal Engineering Specialist and Section

Chief of Flight Simulation at Bombardier, announced to Bombardier that he was resigning effective March 2, 2017. On March 2, 2017—Mr. Knystautas’ planned last day of employment—Bombardier (through its outside counsel at Norton Rose Fulbright) demanded that Mr. Knystautas continue working at Bombardier for an additional ten weeks. (Dkt. 105-1 at 35-38.) Mr. Knystautas responded by stating his disagreement with Bombardier’s demand but offering to extend his end date so as to provide a six-week notice period which, on account of overtime worked, would make his last day of work at Bombardier March 24, 2017. (Dkt. 105-1 at 40, 42.) In response, Bombardier refused to shorten the notice period it had demanded. (Dkt. 105-1 at 44.) Ultimately, Mr. Knystautas agreed to continue working at Bombardier until April 7, 2017, weeks after Mr. Knystautas’ original scheduled start date with MITAC. (Dkt. 105-1 at 46.) Similarly, on August 1, 2017, Bombardier demanded that Jeff Kirdeikis, then a Principal Engineering Specialist, provide eight weeks’ advance notice of his departure, and in doing so extend his announced end date at Bombardier and scheduled start date at MITAC. Ultimately, Mr. Kirdeikis agreed to extend his end date until late August, delaying his anticipated start date at MITAC.

**Response to Paragraph 45:** The allegations in Paragraph 45 contain characterizations of documents that speak for themselves. Bombardier admits Paragraph 45 only to the extent the referenced exhibits are communications between Bombardier management and employees who were leaving Bombardier to work on the “MRJ project.” Bombardier specifically denies that the communications were “ultimatums” (or ultimatum “examples”) that exceed Bombardier’s management rights or improperly impinge on the rights of its employees, and denies any remaining allegations in Paragraph 45.

46. On information and belief, Bombardier has taken additional actions designed to limit the mobility of its employees, including by notifying employees that if they accept work on the MRJ project, they will be blacklisted from any future work at Bombardier.

**Response to Paragraph 46:** Bombardier denies the allegations in Paragraph 46.

1           47. As part of its predatory scheme to impede competition from the MRJ,  
 2 Bombardier filed its original complaint in this action on October 19, 2018, alleging claims of  
 3 trade secret misappropriation against MITAC, MITAC America, AeroTEC, and former  
 4 Bombardier employees Laurus Basson, Marc-Antoine Delarche, Cindy Dorneval, Michel  
 5 Korwin-Szymanowski, and Keith Ayre; tortious interference with contractual relationship  
 6 and/or business expectancy against MITAC, MITAC America, AeroTEC, and Mr. Korwin-  
 7 Szymanowski; and breach of contract against Mr. Basson, Mr. Delarche, and Mrs. Dorneval.  
 8 Bombardier also named as defendants 88 “John and/or Jane Does,” identified only as former  
 9 Bombardier employees now employed by MITAC, MITAC America, or AeroTEC or  
 10 otherwise “working actively on the Mitsubishi Regional Jet project.” (*See* Dkt. 1.) In its  
 11 prayer for relief, Bombardier sought, among other things, “a preliminary and permanent  
 12 injunction prohibiting MITAC, MITAC America, AeroTEC, and all those employed by, or  
 13 acting in concert with, any of them from continuing to recruit personnel from Bombardier for  
 14 the improper purpose of obtaining Bombardier confidential, proprietary, and/or trade secret  
 15 information[.]” (*Id.* at 90.)

16           **Response to Paragraph 47:**           The allegations in Paragraph 47 contain  
 17 characterizations of a document that speaks for itself. Bombardier admits it filed the  
 18 complaint in this action on October 19, 2018, but denies that act was part of an alleged-but  
 19 non-existent-“predatory scheme to impede competition from the MRJ.” Bombardier denies  
 20 the remaining allegations in Paragraph 47 to the extent they suggest or imply the filing of the  
 21 complaint was an improper act or seeks improper relief.

22           48. Also on October 19, 2018, Bombardier filed a motion for preliminary  
 23 injunction against MITAC America, AeroTEC, Mr. Basson, Mr. Delarche, and Ms. Dorneval.  
 24 (Dkt. 4.) Although cloaked in the language of trade secrets and propriety information, the  
 25 motion and proposed order reveal that Bombardier’s primary objective in this litigation is to  
 26 prevent and impede competition in the regional jet market. For example, in identifying the  
 27 “irreparable harm” that it will incur if a preliminary injunction is not granted, Bombardier

1 states that “unless the Defendants are enjoined, Bombardier’s misappropriated trade secret  
 2 information stands to serve as the very foundation for a revival of the Japanese aircraft  
 3 manufacturing industry as a whole.” (*Id.* at 20.) It adds that absent an injunction, Bombardier  
 4 will “be forced to compete with literally a new nation of competing aircraft manufacturers  
 5 that would otherwise not exist for at least several years to come.” (*Id.* at 21.)

6 **Response to Paragraph 48:** The allegations in Paragraph 48 contain  
 7 characterizations of a document that speaks for itself. Bombardier admits it filed a motion for  
 8 preliminary injunction on October 19, 2018. Bombardier denies any remaining allegations in  
 9 Paragraph 48.

10 49. Since filing its first complaint and preliminary injunction motion, Bombardier  
 11 has confirmed that its objective in this litigation is to delay the certification of the MRJ. In a  
 12 brief submitted to the Court on December 7, 2018, Bombardier contended that any delay in  
 13 the schedule for its motion for a preliminary injunction could render its request for equitable  
 14 relief “moot” given MITAC’s “public statements that it expects to obtain regulatory  
 15 certification for its commercial aircraft ‘in mid-2019.’” (Dkt. 47 at 5; *see also id.* at 9 (“This  
 16 may prove too late, as MITAC Japan expects certification of its aircraft by mid-2019.”).)

17 **Response to Paragraph 49:** The allegations in Paragraph 49 contain  
 18 characterizations of a document that speaks for itself. To the extent an answer is required,  
 19 Bombardier admits it submitted a brief to the Court on December 7, 2018, but denies that the  
 20 brief “confirmed” any improper “objective in this litigation [] to delay the certification of the  
 21 MRJ.” Bombardier’s brief was filed as part of its efforts to obtain relief it believes it is  
 22 entitled to receive.

23 50. Bombardier’s second preliminary injunction motion—filed against MITAC,  
 24 Mr. Delarche, and Mr. Ayre on April 4, 2019, after MITAC America had filed its antitrust and  
 25 unfair competition counterclaims against Bombardier—repeats the brazenly anticompetitive  
 26 refrain of the first preliminary injunction motion. Bombardier again contends that competition  
 27 from MITAC constitutes irreparable harm, claiming that an injunction is necessary to prevent

1 the “revival of the Japanese aircraft manufacturing industry as a whole” and that absent an  
 2 injunction, Bombardier would be “forced to compete with literally a new nation of aircraft  
 3 manufacturers . . . .” (Dkt. 123 at 19-20.)

4 **Response to Paragraph 50:** The allegations in Paragraph 50 contain  
 5 characterizations of a document that speaks for itself. To the extent an answer is required,  
 6 Bombardier admits it submitted a motion to the Court on April 4, 2019, but denies the motion  
 7 “repeats” any “brazenly anticompetitive refrain” of any earlier filing. Bombardier denies all  
 8 other allegations of Paragraph 50.

9 51. Similarly, in an April 12, 2019 letter to the Court, Bombardier provided further  
 10 evidence of its intent to use this litigation in an attempt to thwart competition from the MRJ.  
 11 Reiterating the statements made in its December 7, 2018 letter, Bombardier claimed that a  
 12 preliminary injunction was urgently needed because MRJ certification efforts have progressed  
 13 and “if the Defendants successfully certify the MRJ before injunctive relief can be imposed,  
 14 Bombardier’s motions become moot, and the irreparable harm awaiting Bombardier becomes  
 15 unavoidable.” (Dkt. 134.)

16 **Response to Paragraph 51:** The allegations in Paragraph 51 contain  
 17 characterizations of documents that speak for themselves. To the extent an answer is required,  
 18 Bombardier admits it submitted a letter to the Court on April 12, 2019, but denies the letter  
 19 “provided further evidence of its intent to use this litigation in an attempt to thwart  
 20 competition,” and further denies all other allegations of Paragraph 51.

21 52. Bombardier’s first amended complaint, filed on April 30, 2019, further  
 22 confirms Bombardier’s anticompetitive intent. (*See* Dkt. 143.) While on the one hand  
 23 professing concern about “stifling innovation in an industry that is absolutely critical for the  
 24 regional and worldwide economies,” (*id.* at 45), Bombardier nevertheless complains of harm  
 25 in the form of “accelerated regional-jet-market competition.” (*Id.* at 7.) And despite the fact  
 26 that MITAC and MITAC America had never “recruit[ed] personnel from Bombardier for the  
 27 improper purpose of obtaining Bombardier confidential, proprietary, and/or trade secret

1 information,” Bombardier reiterated its request for an injunction barring the defendants from  
 2 “continuing to recruit” from Bombardier. (*See id.* at 115-16).

3 **Response to Paragraph 52:** The allegations in Paragraph 52 contain  
 4 characterizations of a document that speaks for itself. To the extent an answer is required,  
 5 Bombardier admits it submitted an amended complaint to the Court on April 30, 2019, but  
 6 denies the complaint “confirms Bombardier’s anticompetitive intent,” and additionally denies  
 7 any remaining allegations of Paragraph 52.

8 53. Like its pre-litigation demands, Bombardier’s statements in this litigation  
 9 confirm that its primary objective here is to impede and delay entry of a nascent competitor in  
 10 the regional jet market. The form of relief requested by Bombardier’s complaints and  
 11 preliminary injunction motions evidence that Bombardier’s primary motivation is not to  
 12 protect any valid intellectual property rights, but rather to accomplish the illicit goal of its  
 13 anticompetitive scheme. Tellingly, Bombardier rejected MITAC and MITAC America’s offer  
 14 to enter a private agreement confirming the continued non-use and non-disclosure of the 11  
 15 supposedly secret documents identified in Bombardier’s preliminary injunction motion,  
 16 electing to instead make public allegations in an effort to obtain a public court order that has  
 17 the potential to further chill employees from considering employment with MITAC and  
 18 MITAC America and delay or undermine sales of the MRJ. (*See* Dkt. 76, Ex. A; *see also* Dkt.  
 19 165 at 10-11.) Moreover, despite knowing about the hiring activities in support of the MRJ  
 20 program at issue in its complaints since at least 2015 and knowing (or having reason to know)  
 21 about the circumstances of the individual defendants’ departures for years, Bombardier waited  
 22 until late 2018 to file this lawsuit. On information and belief, Bombardier delayed filing suit  
 23 until the MRJ was close to entering the market and increasingly competing with the CRJ for  
 24 sales so as to maximize the damage to Mitsubishi’s reputation and undermine sales of the  
 25 MRJ.

26 **Response to Paragraph 53:** Bombardier admits filing this suit in 2018, but  
 27 denies all other allegations of Paragraph 53.

1 **C. Bombardier's Pretextual and Meritless Excuses for its Efforts to Impede**  
 2 **Competition**

3 54. Bombardier's supposed justifications for demanding the cessation of hiring  
 4 related to the MRJ project have shifted through the years, but the primary motivation for its  
 5 actions, as established by its own statements, has remained the same: to impede or delay the  
 6 formidable competition on the merits posed by the MRJ's entry into the regional jet market.

7 **Response to Paragraph 54:** Bombardier denies the allegations in Paragraph  
 8 54.

9 55. As detailed above, Bombardier's initial threats against AeroTEC lacked factual  
 10 and legal merit. Among other things, Bombardier did not have a basis to enforce its Code of  
 11 Ethics and Business Conduct against departed employees in the way it contended, including  
 12 against Mr. Korwin-Szymanowski, nor did it have a basis for its claims that AeroTEC could  
 13 face "substantial liability" as a result of its lawful hiring efforts. Moreover, the form of  
 14 "relief" sought by Bombardier—that AeroTEC enter an unenforceable, anticompetitive no-  
 15 poach agreement—demonstrates the bad faith nature of Bombardier's demands.

16 **Response to Paragraph 55:** Bombardier denies the allegations in Paragraph  
 17 55.

18 56. Bombardier's initial threats against Mitsubishi were similarly meritless. As  
 19 explained, the June 3, 2016 demand to "cease[] immediately" the soliciting and hiring of  
 20 Bombardier personnel provided no legal or factual basis beyond a vague and speculative  
 21 reference to the possibility that some undefined "Bombardier proprietary methods and know-  
 22 how" would "inevitably be transferred and used by AeroTEC or MHI." The next letter, sent  
 23 July 14, 2016, falsely insinuated that MITAC's planned job fair was illegal. The subsequent  
 24 letters from Bombardier's President and Chief Executive Officer to MHI's Chairman of the  
 25 Board levied similarly vague and unsupported claims that Mitsubishi's hiring practices were  
 26 unlawful, threatening that the MHI-Bombardier supply relationship would be jeopardized if  
 27 the hiring activities continued.



1           **Response to Paragraph 56:**           The allegations in Paragraph 56 contain  
 2 characterizations of documents that speak for themselves. Bombardier denies the allegations  
 3 in Paragraph 56 in that they mischaracterize Bombardier as making threats, false insinuations,  
 4 and levying vague and unsupported claims. *See* Bombardier’s responses to Paragraphs 33 and  
 5 34 above. Bombardier denies the remaining allegations in Paragraph 56.

6           57.     The demands issued to Mitsubishi by Bombardier’s outside counsel likewise  
 7 sought to coerce MITAC to enter an anticompetitive no-poach agreement through baseless  
 8 allegations of illegal conduct by Mitsubishi. As explained, the February 17, 2017 letter  
 9 claimed that by “targeting and soliciting key employees at Bombardier[,] Mitsubishi is (i)  
 10 knowingly destabilising Bombardier’s aircraft activities which constitutes unfair  
 11 competition.” But the letter was devoid of facts suggesting that Bombardier had been  
 12 “destabilized” by the loss of the 26 employees identified in the letter (or otherwise), let alone  
 13 that Mitsubishi had any reason to know that its efforts to hire employees for the MRJ program  
 14 had any such effect. In fact, Bombardier had engaged in several rounds of highly-publicized  
 15 layoffs, including in its aviation business, and Bombardier had already completed certification  
 16 activities for its CSeries aircraft.

17           **Response to Paragraph 57:**           The allegations in Paragraph 57 contain  
 18 characterizations of a document that speaks for itself. Bombardier specifically denies the  
 19 allegations in Paragraph 57 to the extent they characterize Bombardier as seeking “to coerce  
 20 MITAC to enter an anticompetitive no-poach agreement through baseless allegations of  
 21 illegal conduct by Mitsubishi” and sending any communication “devoid of facts.” *See*  
 22 Bombardier’s response to Paragraph 39 above. Bombardier denies the remaining allegations  
 23 in Paragraph 57.

24           58.     The February 17, 2017 letter also claimed that Mitsubishi was “(ii) acquiring  
 25 proprietary information belonging to Bombardier to accelerate the development and entry into  
 26 service of the MRJ aircraft.” But the letter identified no such “proprietary information  
 27 belonging to Bombardier” or “trade secrets” that had been taken by any of the departed

employees, let alone acquired by Mitsubishi. Indeed, as the Court recognized, “none of Bombardier’s alleged [pre-litigation] requests to stop recruitment identified a specific trade secret.” (Dkt. 136 at 31). The February 17, 2017 letter left little doubt that it was the employees’ own “know-how . . . acquired [in] the context of the development of new aircraft programs” that Bombardier sought to prevent being used on the MRJ program. Bombardier had no legal basis to stop its employees from taking that know-how to Mitsubishi. Nor did Bombardier have any legal basis for its demands that MITAC enter a per se illegal no-poach agreement. Nevertheless, even after MITAC’s counsel pointed out the factual and legal infirmities in Bombardier’s demands, Bombardier reiterated its baseless claims in its counsel’s April 12, 2017 letter.

**Response to Paragraph 58:** The allegations in Paragraph 58 contain characterizations of documents that speak for themselves. Bombardier admits to sending letters on February 17, 2017, and April 12, 2017, but Bombardier specifically denies the allegations in Paragraph 58 in that they mischaracterize Bombardier’s communications as having “factual and legal infirmities” and falsely portray Bombardier’s counsel as reiterating “baseless claims.” For additional bases for denying the allegations of Paragraph 58, *see* Bombardier’s response to Paragraph 39 above. Bombardier denies any remaining allegations in Paragraph 58.

59. The form of “relief” requested by Bombardier further demonstrates the anticompetitive nature its pre-litigations threats and demands. Each of Bombardier’s demands to Mitsubishi and AeroTEC sought the cessation of recruitment and hiring activities in support of the MRJ project. Bombardier did not (and could not) contend that any specific trade secrets had been misappropriated by Mitsubishi or AeroTEC for use in the MRJ program, nor did Bombardier request that the companies refrain from or cease using any misappropriated trade secrets. Rather, Bombardier improperly demanded that Mitsubishi and AeroTEC cease their lawful hiring activities. Indeed, Bombardier demanded that AeroTEC

1 cease the hiring of not only Bombardier's current employees but also former employees who  
2 had already departed the company.

3 **Response to Paragraph 59:** Bombardier specifically denies the allegations in  
4 Paragraph 59 in that they mischaracterize Bombardier's pre-litigation communication as  
5 "anticompetitive," "threatening," and "improper." Bombardier denies the remaining  
6 allegations in this paragraph.

7 60. Bombardier's counsel in the instant litigation has essentially confirmed that  
8 there was no factual basis for Bombardier's initial threats and demands. In a January 11, 2018  
9 email to counsel for MITAC, MITAC America, and the AeroTEC defendants, Bombardier's  
10 counsel stated that "[w]hile Bombardier certainly took issue with your clients' recruiting  
11 tactics those years ago, litigation was not necessary until (1) Bombardier discovered actual  
12 evidence of trade secret misappropriation . . ." Although MITAC denies Bombardier's  
13 counsel's assertion regarding trade secret misappropriation, counsel's statement amounts to an  
14 unqualified admission that Bombardier did not have any evidence of misappropriation at the  
15 time Bombardier demanded that Mitsubishi and AeroTEC enter illegal no-poach agreements  
16 to delay or disrupt certification and sale of the MRJ.

17 **Response to Paragraph 60:** The allegations in Paragraph 60 contain  
18 characterizations of a document that speaks for itself. To the extent a response is required, all  
19 allegations of Paragraph 60 are denied.

20 61. Bombardier's threats towards its former and then-current employees also  
21 represent an improper attempt to chill the free flow of skilled labor. As suggested by the  
22 Court's Order on Motions to Dismiss, Bombardier had no legal basis to contend that its Code  
23 of Ethics and Business Conduct imposed binding contractual obligations on its former  
24 employees that prevented them from seeking or accepting new employment. (*See* Dkt. 136 at  
25 35.) Nor did Bombardier have a factual basis to insinuate that the dozens of recipients of its  
26 letters had acted contrary to the Bombardier Code of Ethics and Business Conduct or any  
27

1 provision of law. On information and belief, Bombardier's objective in issuing these demands  
2 was to impede or delay the MRJ program.

3 **Response to Paragraph 61:** The allegations in Paragraph 61 contain  
4 characterizations of documents that speak for themselves. To the extent a response is required,  
5 Bombardier denies the allegations in Paragraph 61.

6 62. Bombardier's claims against MITAC and MITAC America in this litigation  
7 are meritless. There is no factual or legal basis for Bombardier's claims that MITAC or  
8 MITAC America misappropriated Bombardier's trade secrets, tortiously interfered with a  
9 valid contractual relationship or business expectancy of Bombardier, or otherwise acted  
10 unlawfully by recruiting, hiring, and continuing to employ former Bombardier employees. On  
11 information and belief, Bombardier's objective in filing its original and amended complaints  
12 and preliminary injunction motions was to impede or delay the development, certification,  
13 and sale of the MRJ.

14 **Response to Paragraph 62:** Bombardier denies the allegations in Paragraph  
15 62.

16 63. Neither MITAC nor MITAC America has acquired, possessed, used, disclosed,  
17 or even had knowledge of the alleged trade secret information identified by Bombardier. In  
18 particular, no one at MITAC nor MITAC America has obtained or used any of the 11  
19 supposedly secret documents identified in Bombardier's motion for a preliminary injunction.  
20 MITAC and MITAC America take precautions to ensure that newly hired employees do not  
21 transfer to MITAC and MITAC America, or use in their work for MITAC and MITAC  
22 America, trade secrets or other confidential or proprietary information that they acquired from  
23 former employers. New employees are instructed not to bring any proprietary information or  
24 materials from their former employers, and they are further instructed not to use, release, or  
25 disclose any such information during their employment at MITAC or MITAC America. These  
26 requirements are embedded in MITAC's Code of Ethics. On information and belief, the same  
27 precautions are taken with respect to persons hired by MITAC's partners, such as AeroTEC,

1 who perform work on projects for MITAC or MITAC America. Consistent with these  
 2 policies, on information and belief, many if not all of the former Bombardier employees hired  
 3 by AeroTEC were specifically admonished not to bring with them, disclose, or otherwise  
 4 misappropriate Bombardier trade secrets or confidential information. In any event, the  
 5 alleged trade secrets identified by Bombardier would have been of no use to the development,  
 6 certification, and sale of the MRJ by MITAC and MITAC America.

7 **Response to Paragraph 63:** Bombardier denies all allegations in Paragraph  
 8 63.

9 64. Even if Bombardier had a basis to allege that MITAC or MITAC America had  
 10 obtained Bombardier information, Bombardier's claims would lack merit insofar as the  
 11 documents and information that Bombardier contends constitutes legally-protectable trade  
 12 secrets are not legally-protectable trade secrets because, among other things, such information  
 13 is publicly available and/or was provided to Bombardier by government agencies.

14 **Response to Paragraph 64:** Bombardier denies the allegations in Paragraph  
 15 64.

16 65. The baselessness of Bombardier's trade secret misappropriation claims against  
 17 MITAC America is reflected in part by the Court's Order on Motions to Dismiss, which  
 18 found that Bombardier's claim did not pass muster even at the pleading stage because the  
 19 original complaint "fail[ed] to allege that MITAC America knew or had reason to know that it  
 20 improperly acquired or used Bombardier's trade secrets." (Dkt. 136 at 19.) Rather than  
 21 acknowledge the baselessness of its claim against MITAC America, Bombardier instead  
 22 doubled down by reasserting the claim in its amended complaint—not on the basis of any new  
 23 allegations regarding MITAC America's conduct, but rather based on the contrived theories  
 24 that MITAC America operates as an "alter ego" of MITAC and that AeroTEC employee Mr.  
 25 Korwin-Szymanowski is an "agent" of MITAC America. (*See* Dkt. 143.) Both theories are  
 26 based on allegations that Bombardier could have made in its original complaint, underscoring  
 27 that Bombardier is now grasping at straws in an effort to see that its claims against MITAC

1 America proceed past the pleading stage. Notably, Bombardier also failed to add any new  
 2 allegations regarding MITAC's conduct. (*See id.*) Although MITAC has chosen not to file a  
 3 motion to dismiss Bombardier's first amended complaint, it is confident that the baselessness  
 4 of Bombardier's claims against MITAC will be established during the course of this case.

5 **Response to Paragraph 65:** The allegations in Paragraph 65 contain  
 6 characterizations of documents that speak for themselves. Bombardier denies any remaining  
 7 allegations in Paragraph 65.

8 66. On information and belief, Bombardier's claims against AeroTEC in this  
 9 litigation are meritless because, among other things, AeroTEC: has not acquired, possessed,  
 10 used, or disclosed the alleged trade secret information identified by Bombardier; has not  
 11 tortiously interfered with a valid contractual relationship or business expectancy of  
 12 Bombardier; and has not otherwise acted unlawfully by recruiting, hiring, and continuing to  
 13 employ former Bombardier employees.

14 **Response to Paragraph 66:** Bombardier denies the allegations in Paragraph  
 15 66.

16 67. On information and belief, Bombardier's claims against the individual  
 17 defendants in this litigation are meritless because, among other things, none of the individual  
 18 defendants: used any Bombardier trade secrets in performing work on the MRJ project;  
 19 transferred any documents containing Bombardier trade secrets to any AeroTEC, MITAC, or  
 20 MITAC America computer; disclosed any Bombardier trade secrets to any persons employed  
 21 by AeroTEC, MITAC, or MITAC America; or discussed any Bombardier trade secrets with  
 22 other persons employed by AeroTEC, MITAC, or MITAC America.

23 **Response to Paragraph 67:** Bombardier denies the allegations in Paragraph  
 24 67.

25 68. On information and belief, none of the individual defendants who allegedly  
 26 sent Bombardier documents to their personal email accounts did so for the purpose of  
 27 misappropriating those documents or Bombardier's trade secrets or other proprietary

1 information. Rather, each did so for the purpose of conducting work that they had been  
 2 assigned to do for Bombardier or for other reasons unrelated to the individuals' subsequent  
 3 work on the MRJ project. Moreover, it was a common practice for Bombardier employees to  
 4 send Bombardier documents to their home email systems so that they could work on and  
 5 complete work assignments at home.

6 **Response to Paragraph 68:** Bombardier specifically denies the allegations in  
 7 Paragraph 68 to the extent they contend that individual defendants who sent Bombardier  
 8 documents to their personal email accounts did “so for the purpose of conducting work that  
 9 they had been assigned to do for Bombardier or for other reasons unrelated to the individuals’  
 10 subsequent work on the MRJ.” Bombardier denies the remaining allegations in this paragraph  
 11 because it lacks knowledge or information sufficient to form a belief about the truth, if any, of  
 12 the allegations.

13 69. The baselessness of Bombardier’s claims is exemplified by obvious  
 14 shortcomings in its allegations. For example, Bombardier knew or should have known that the  
 15 11 purportedly “secret” documents identified in Bombardier’s preliminary injunction motions  
 16 would not be useful to MITAC or MITAC America because the MRJ has a very different  
 17 design than any Bombardier plane and the certifying body for the MRJ—the Japan Civil  
 18 Aviation Bureau—is very different from Transport Canada Civil Aviation, the government  
 19 agency that certifies Bombardier’s planes. (*See also* Dkt. 165 at 3-4.) Bombardier also knew  
 20 or should have known that its allegations about Mr. Ayre’s supposed disclosure of “trade  
 21 secret information pertaining to Fire Detection and Extinguishing (“FIDEX”) and related  
 22 System Safety Analysis (“SSA”)” show no misconduct whatsoever by Mr. Ayre or any other  
 23 defendant. (*See* Dkt. 143 at 20-21.) To the contrary, it is readily apparent from the content of  
 24 the documents referenced in Bombardier’s first amended complaint that Mr. Ayre was  
 25 describing a flaw with Bombardier’s C-Series aircraft that Mr. Ayre sought to ensure would  
 26 be addressed after his departure in order to ensure the safety of the C-Series----a benefit to  
 27 Bombardier. Bombardier likewise has no basis for its allegation that Mr. Ayre’s August 18,



2016 draft email to Mr. Koki Fukuda of MITAC contains any Bombardier trade secret information, let alone that the information would be useful to MRJ certification. (*See* Dkt. 146 at 5.) To the contrary, the draft email merely includes publicly available information regarding Federal Aviation Authority's regulatory requirements. (*See* Dkt. No. 127 Exs. A and B; *see also* Dkt. 160 at 7-9). These are but some of the many examples demonstrating that Bombardier's claims against MITAC and MITAC America lack merit.

**Response to Paragraph 69:** Bombardier denies the allegations in Paragraph 69.

70. On information and belief, none of the Bombardier documents that the individual defendants allegedly sent to their personal email accounts contained trade secret information that would have been of use in the development, manufacture, or certification of the MRJ because of, among other things, the significant differences between the MRJ and Bombardier's jet aircraft, including but not limited to different systems (e.g., different flap skew detection systems and different pitot-static systems) and different engines. Bombardier knew or should have known that the Bombardier documents that the individual defendants allegedly sent to their home email systems contained no trade secret information that would have been of use in the development, manufacture, or certification of the MRJ.

**Response to Paragraph 70:** Bombardier denies the allegations in Paragraph 70.

#### **D. The Relevant Market and Bombardier's Market Power**

71. The relevant market of commerce in which to analyze the effects of Bombardier's anticompetitive scheme is the market for single-aisle, turbofan-powered commercial aircraft with seating capacity for 50 to 100 passengers and flight ranges up to approximately 2,500 nautical miles (the "Regional Jet Market").

**Response to Paragraph 71:** Paragraph 71 sets forth a legal conclusion requiring no response. To the extent a response is required, Bombardier denies that Paragraph

1 71 contains a proper definition of a “Regional Jet Market,” and it denies all remaining  
 2 allegations contained in Paragraph 71.

3 72. The Regional Jet Market is an accepted, defined market within the aerospace  
 4 industry. Commercial aircraft with capacity for over 100 passengers are classified within the  
 5 industry as “narrowbody” jets (such as the Boeing 737 and the Airbus A220) or even larger  
 6 “widebody” jets (such as the Boeing 747 and the Airbus 330). Bombardier’s own annual  
 7 market forecasts acknowledge that the jet industry is segmented between “regional aircraft”  
 8 with capacity for up to 100 seats and jets with greater seating capacity. Similarly,  
 9 Bombardier’s Commercial Aircraft President Fred Cromer has stated as recently as June 2018  
 10 that the market for regional jets with a maximum capacity of 100 passengers is distinct from  
 11 the market for narrowbody jets with capacity for over 100 passengers, acknowledging that  
 12 Bombardier’s CSeries family of jets (small narrowbody jets with seating capacity of 108  
 13 passengers and above, now known as the Airbus A220) do not compete within the market for  
 14 regional jets.

15 **Response to Paragraph 72:** Bombardier denies that Paragraph 72 accurately  
 16 defines the “Regional Jet Market” and on that basis denies the remaining allegations.

17 73. Regional jets are not interchangeable with other commercial aircraft given  
 18 their differentiated passenger seating capacity, flight ranges, fuel efficiencies, operating costs,  
 19 and sales prices. Other commercial aircraft are not close enough substitutes to prevent  
 20 Bombardier and other regional jet suppliers from raising prices above competitive levels,  
 21 degrading quality, or reducing output for regional jets. Put simply, other commercial aircraft  
 22 are not a material competitive constraint on Bombardier regional jets.

23 **Response to Paragraph 73:** Bombardier denies the allegations of Paragraph  
 24 73.

25 74. Specifically, airlines and other aerospace customers do not consider larger  
 26 narrowbody jets to be a reasonable substitute for regional jets, nor do they consider regional  
 27 jets to be a reasonable substitute for narrowbody jets. Regional jets and narrowbody jets are

1 differentiated by their passenger seating capacities, flight ranges, and costs, among other  
 2 factors. For example, the shorter flight range of regional jets prevents regional jets from  
 3 servicing many routes that can be served only by narrowbody jets, including routes between  
 4 the East and West coasts of the United States. Moreover, government regulations, airport  
 5 operating restrictions, and contractual arrangements, including clauses in airline pilot  
 6 contracts limiting the size of aircraft that can be flown by certain pilots, serve to reduce the  
 7 interchangeability of regional jets and narrowbody jets. Regional jets and narrowbody jets are  
 8 also differentiated by their initial sales price and subsequent operating costs. Larger and  
 9 heavier narrowbody jets typically cost more to operate, on a trip cost basis, than smaller  
 10 regional jets, and these operating costs represent most of the lifetime cost of a plane. As a  
 11 result, airlines and other aerospace customers are disinclined to purchase a jet with more seats  
 12 or a longer flight range than needed for a specific route. Narrowbody jets are not a material  
 13 competitive constraint on regional jets.

14 **Response to Paragraph 74:** Bombardier denies the allegations of Paragraph  
 15 74.

16 75. Airlines and other aerospace customers do not consider turboprop airplanes to  
 17 be a reasonable substitute for regional jets, nor do they consider regional jets to be a  
 18 reasonable substitute for turboprop airplanes. As compared to turboprop airplanes, regional  
 19 jets are capable of longer flight ranges, are faster, are safer, and provide superior passenger  
 20 comfort, including less noise and vibration. Regional jets and turboprop airplanes are also  
 21 differentiated by their initial sales price and subsequent operating costs. As such, turboprop  
 22 airplanes are not a material competitive constraint on regional jets.

23 **Response to Paragraph 75:** Bombardier denies the allegations of Paragraph  
 24 75.

25 76. For these reasons, the Regional Jet Market is a distinct product market. The  
 26 relevant geographic market for regional jets is worldwide. Regional jets are manufactured by  
 27 a small number of companies (predominantly Bombardier and Embraer) and are capable of

1 being sold by those companies on a worldwide basis. However, the United States is the largest  
 2 and most important market area for regional jet manufacturers, as discussed further below.

3 **Response to Paragraph 76:** Bombardier denies the allegations of  
 4 Paragraph 76 in that MITAC America's definition of "the Regional Jet Market" is a legal  
 5 conclusion, not a statement of fact. Bombardier lacks information sufficient to form a belief  
 6 concerning any remaining allegations of Paragraph 76 and on that basis denies them.

7 77. Bombardier has significant market power in the Regional Jet Market.  
 8 Bombardier's market power in the Regional Jet Market is directly evidenced by its ability to  
 9 exclude or delay the entry of competition in the Regional Jet Market. Bombardier's market  
 10 power is further demonstrated by its significant share of the Regional Jet Market, a market  
 11 which is highly concentrated with the vast majority of jets manufactured by Bombardier and  
 12 Embraer and is subject to substantial barriers to entry and other conditions that serve to  
 13 protect Bombardier's market power, including Bombardier's exclusionary conduct. On  
 14 information and belief, these conditions allow Bombardier to charge supracompetitive prices  
 15 for regional jets.

16 **Response to Paragraph 77:** The allegations of Paragraph 77 contain legal  
 17 conclusions to which no response is required. To the extent a response is required,  
 18 Bombardier denies all allegations of Paragraph 77.

19 78. Since the launch of the original CRJ, Bombardier has held a significant share  
 20 of the Regional Jet Market. From at least 2010 to present, Bombardier's worldwide share of  
 21 the Regional Jet Market has consistently been over 40%, with Bombardier's CRJs comprising  
 22 over 40% of in-service regional jets worldwide as of 2018. Bombardier's position has been  
 23 even more significant in the largest and most important market for regional jets, the United  
 24 States. In the U.S., where Bombardier's only other active competitor in recent years has been  
 25 Embraer, Bombardier's market share was 49% as of 2018.

26 **Response to Paragraph 78:** The allegations in Paragraph 78 contain legal  
 27 conclusions to which no response is necessary. To the extent a response is required,

1 Bombardier denies the remaining allegations in this paragraph, including the related footnote,  
2 which state opinion, rather than fact.

3         79. Bombardier's public statements confirm that the company expects to increase  
4 its share of the Regional Jet Market in the near term. In media briefings in June 2018,  
5 Bombardier's Commercial Aircraft President Fred Cromer stated that Bombardier is actively  
6 seeking to increase its share of the market through sales of its CRJ 900 and that the company  
7 anticipates achieving a market share of over 50%. Mr. Cromer contended that the only  
8 competition for sale of the CRJ 900 came from Embraer, apparently suggesting to the media  
9 and public that the MRJ would not enter the market and compete with the CRJ 900. Indeed,  
10 Mr. Cromer stated that the barriers to entry into the marketplace would effectively shield  
11 Bombardier from competition from the MRJ. In response to a question about whether  
12 Bombardier viewed the MRJ as a competitive threat in the regional jet market, Mr. Cromer  
13 stated that "[i]t's complicated to bring new technology to the marketplace . . . not only in your  
14 home country, but then to establish the footprint outside of your home country with  
15 authorities around the world, and we've been doing that for years and years and years and we  
16 have relationships and we know how to do it, and we know how difficult it is. So I think it is  
17 going to be challenging over time for other OEMs that are starting that process to catch up  
18 with what other established OEMs have, and that allows us to continue to make our own  
19 advancements and continue to be at the forefront of where those opportunities are."

20         **Response to Paragraph 79:** The allegations in Paragraph 79 purport to  
21 characterize certain of Bombardier's public statements without specific citation, but  
22 Bombardier denies that the characterization is either definitive or accurate. Bombardier also  
23 specifically denies statements MITAC America attributes to Mr. Cromer suggest or indicate  
24 anticompetitive activity by Bombardier. Bombardier denies any remaining allegations in this  
25 paragraph.

26         80. Bombardier's power in the Regional Jet Market is augmented by substantial  
27 barriers to entry, including the following:

- 1       • Development costs. The cost of developing a new jet is  
2       significant and often exceeds initial estimates. For example, the  
3       cost of developing the MRJ was initially estimated to be \$1.9  
4       billion but has increased to nearly \$5 billion. Similarly, although  
5       Bombardier initially estimated that development of its  
6       narrowbody CSeries jets would cost \$2.1 billion, the program  
7       ultimately cost \$5.4 billion.
- 8       • Complexity of development and certification process.  
9       Development of a new regional jet is complex, and entry to the  
10      market requires that a new jet pass through a long, complex, and  
11      difficult certification process. In addition, unanticipated  
12      challenges and problems in the development and certification  
13      process are commonplace. Moreover, as explained above, the  
14      finite supply of skilled engineers capable of assisting in the  
15      development and certification of regional jets serves as an  
16      additional barrier to entry.
- 17      • Manufacturing requirements and costs. The manufacturing of  
18      regional jets requires substantial and costly manufacturing  
19      capabilities and facilities, as well as significant reliance on  
20      subcontractors and complex supply chains. Many firms are  
21      incapable of making the substantial investment required to  
22      establish adequate manufacturing capabilities and facilities.
- 23      • Customer trust. Establishing customer trust in the operability  
24      and reliability of a regional jet can present challenges,  
25      particularly for manufacturers that are seeking to enter the jet  
26      market. Establishing a reliable global customer support network  
27      also requires significant investment and presents operational  
28      challenges. This is particularly true given the substantial price  
29      and long-term commitment associated with the purchase of a  
30      regional jet.
- 31      • Brand loyalty and switching costs. Customers with existing  
32      fleets comprised of a given manufacturer's jets may be more  
33      inclined to purchase additional jets from the same manufacturer  
34      rather than a different manufacturer (particularly a new entrant)  
35      given the costs associated with switching to a different  
36      manufacturer's jets. These switching costs include the time and  
37      expense of retraining personnel (pilots, crew, and maintenance  
38      workers); the costs associated with maintenance program  
39      changes, proving flights, establishing a new spare parts  
40      inventory, equipment tooling, and supply chain integration; and  
41      other overhead costs associated with adding a new aircraft type

1 to air operator's certificates issued by national aviation  
 2 authorities. Loyalty to a given manufacturer's jets and personal  
 3 relationships between a manufacturer's and customer's  
 personnel may also present barriers to entry to a new  
 competitor.

4 **Response to Paragraph 80:** Bombardier admits that Paragraph 80 identifies  
 5 considerations relevant to deciding whether to develop, manufacture, sell and service an  
 6 airplane. Paragraph 80 is specifically denied to the extent it implies or suggests that the  
 7 recited considerations are due to anticompetitive activity of Bombardier. Bombardier also  
 8 denies that MITAC has properly defined the "Regional Jet Market." Bombardier denies any  
 9 other allegations in Paragraph 80.

10 81. These barriers to entry and other technical, business, and political challenges to  
 11 penetrating the Regional Jet Market are so significant that government support is often  
 12 necessary to the successful entry of a new jet manufacturer.

13 **Response to Paragraph 81:** Bombardier is without sufficient knowledge to  
 14 form a belief about the truth, if any, of the allegations of this paragraph and therefore denies  
 15 them.

16 82. Both the cyclical nature of demand for regional jets and the length of a  
 17 regional jet's lifecycle can present additional barriers to entry. These interrelated factors also  
 18 make certain periods of time particularly important for manufacturers' sales of regional jets.  
 19 The average lifespan of regional jets currently in service is approximately 18 years. As an in-  
 20 service regional jet nears the end of its life, the owner must choose whether to replace the jet  
 21 or invest in maintenance and related services to extend the life of the jet. In the United States  
 22 (which is home to over 57% of all regional jets in service worldwide), the average age of  
 23 regional jets currently in service is such that a large replacement wave is forecast to begin in  
 24 2022. The ability to make sales in advance of the upcoming U.S. replacement wave will be  
 25 critical to regional jet manufacturers' success, both in terms of earning revenue from initial  
 26 sales and aftermarket services during the life of the aircraft, and in creating a foundation for  
 27 additional sales inside and outside the U.S. The next several years are thus of vital importance



1 to established regional jet manufacturers and new entrants alike. As a result, even a small  
2 impairment to a regional jet manufacturer's ability to compete in the upcoming U.S.  
3 replacement cycle could have significant ramifications for the manufacturer's revenues and  
4 market share—and for the revenues and market shares of the manufacturer's competitors.  
5 Accordingly, if Bombardier successfully prevents, delays, or undermines the MRJ's  
6 availability to be sold during the upcoming U.S. replacement cycle, it could be foreclosed  
7 from capturing any meaningful share of the U.S. and global markets for many years to come,  
8 and could be foreclosed from entry entirely.

9 **Response to Paragraph 82:** Bombardier denies the allegations of  
10 Paragraph 82, to the extent they are opinion based in large part on speculation. Bombardier  
11 specifically denies acting, or having acted in an improper or illegal manner to prevent, delay,  
12 or undermine the MRJ's availability to be sold during what MITAC America considers to be  
13 an upcoming U.S. replacement cycle. Bombardier denies any remaining allegations in this  
14 paragraph because it lacks knowledge or information sufficient to form a belief about the  
15 truth, if any, of the allegations.

16 83. The barriers to entry into the Regional Jet Market increase Bombardier's  
17 market power beyond the level suggested by the company's market share alone. This is  
18 particularly true with respect to customers whose fleets of regional jets are already comprised  
19 in whole or in part by Bombardier jets. Due to the aforementioned switching costs and brand  
20 loyalty in the current duopoly market, Bombardier has greater market power with respect to  
21 customers that already own or operate Bombardier jets. Entry of a new competitor could  
22 threaten Bombardier's market power with respect to these customers, particularly as they  
23 decide whether and when to replace aging CRJs already in their fleet.

24 **Response to Paragraph 83:** Bombardier denies the allegations of  
25 Paragraph 83, to the extent they are opinion based in large part on speculation. Bombardier  
26 specifically denies the allegations of Paragraph 83 to the extent they suggest improper or  
27

1 illegal activity by Bombardier. Bombardier denies any remaining allegations in this  
2 paragraph.

3 84. The nature of regional jets and their lifecycles also make the provision of  
4 aftermarket services an important source of revenue for regional jet manufacturers, including  
5 Bombardier. Over the life of an in-service regional jet, manufacturers typically earn  
6 substantial revenue from the sale of parts, maintenance, repair, and other services. The need  
7 for these services—and thus the revenue manufacturers derive from their provision—tends to  
8 increase as a jet ages. More expensive maintenance services, such as overhaul of jet engines,  
9 also tend to be required later in the life of a regional jet. As a result, as a jet ages, owners are  
10 often confronted with the choice of whether to extend the life of the jet through increasingly  
11 expensive aftermarket maintenance and services or to instead replace the aging jet. A jet  
12 owner's decision to forego the purchase of aftermarket services provided by the jet's  
13 manufacturer and instead to purchase a new regional jet from a different manufacturer would  
14 thus have a significant impact on both manufacturers' revenue streams.

15 **Response to Paragraph 84:** Bombardier denies the allegations of  
16 Paragraph 84, to the extent they are opinion based in large part on speculation. Bombardier  
17 specifically denies the allegations of Paragraph 84 to the extent they suggest improper or  
18 illegal activity by Bombardier. Bombardier denies any remaining allegations in this  
19 paragraph.

20 85. As a result of these market dynamics, even a temporary delay or impairment of the  
21 certification, development, or sale of the MRJ would have a significant impact not only on the  
22 short- and long-term prospects for the MRJ, but also for Bombardier. Indeed, any such delay  
23 or impairment would enable Bombardier to capture additional sales, including in the  
24 upcoming replacement cycle in the U.S., and allow Bombardier to gain additional revenue  
25 from the sale of aftermarket services as airlines elect to extend the lives of in-service  
26 Bombardier jets rather than purchasing new MRJs.

**Response to Paragraph 85:** Bombardier denies the allegations of Paragraph 85, to the extent they are opinion based in large part on speculation. Bombardier specifically denies the allegations of Paragraph 85 to the extent they suggest improper or illegal activity by Bombardier. Bombardier denies any remaining allegations in this paragraph.

**E. Anticompetitive Effect and Injury**

86. Bombardier's anticompetitive practices have excluded competition, reduced choice, suppressed innovation, and increased barriers to entry in the Regional Jet Market. On information and belief, Bombardier's conduct has also reduced output and increased prices for regional jets. As a result, Bombardier's actions have harmed competition, regional jet purchasers, engineers, and MITAC.

**Response to Paragraph 86:** Bombardier denies the allegations in Paragraph 86.

87. Competition in the Regional Jet Market has been harmed. Bombardier has delayed the entry of new competitors, reduced the movement of skilled aerospace engineers, reduced choice, and suppressed innovation. By delaying the entry of new regional jets, Bombardier has reduced choice and limited innovation in the Regional Jet Market. By blocking and otherwise chilling the movement of skilled engineers within the market, Bombardier has further diminished competitors' ability to compete and innovate in the market. And by unfairly tarnishing the image of Mitsubishi and the MRJ in the eyes of customers, Bombardier has suppressed competition in the Regional Jet Market. On information and belief, this has reduced output and elevated prices of regional jets above what they would have been but for Bombardier's conduct.

**Response to Paragraph 87:** Bombardier denies the allegations in Paragraph 87.

1           88. Purchasers of regional jets have also been harmed in that they have fewer and  
2 less innovative options for regional jets. In addition, Bombardier can maintain higher prices  
3 than would otherwise prevail in the face of new competition.

4           **Response to Paragraph 88:** Bombardier denies the allegations in Paragraph  
5 88.

6           89. Individual engineers looking for employment related to commercial jets have  
7 also been harmed. Individual engineers and competitors for their talent are harmed by  
8 Bombardier's campaign to impede the movement of skilled engineers. The industry is highly  
9 concentrated and news travels fast when any company or individual in the industry is sued.  
10 Bombardier's threats and actual litigation against individual employees chills the marketplace  
11 for such talent, which will endure for several years to come.

12           **Response to Paragraph 89:** Bombardier denies the allegations in Paragraph  
13 89.

14           90. MITAC has incurred antitrust injury from the violations of law alleged and  
15 would not have incurred such injury in the absence of Bombardier's anticompetitive actions.  
16 As the direct result of Bombardier's ongoing predatory campaign described above, MITAC  
17 has been undermined or delayed in its ability to recruit, hire, and retain engineers critical to  
18 the development and certification of the MRJ, which has not only risked delaying the MRJ's  
19 certification, but also impedes MITAC's innovation and design efforts and raises MITAC's  
20 costs and the barriers to enter the Regional Jet Market.

21           **Response to Paragraph 90:** Bombardier denies the allegations in Paragraph  
22 90.

23           91. For example, as a result of Bombardier's anticompetitive conduct:

- 24           • Recruitment and hiring efforts by MITAC, MITAC America,  
25 and AeroTEC in support of the MRJ program have been  
26 undermined.

- AeroTEC was forced to decline to extend an offer of employment to one or more Bombardier employees that would have supported the MRJ program.
- At least one prospective employee that MITAC America intended to hire withdrew his application for employment, citing the situation between Bombardier and Mitsubishi as the reason for doing so.
- The start dates of at least two individuals employed in connection with the MRJ program were delayed.
- On information and belief, other prospective employees declined to either seek or accept employment on the MRJ program, slowing the pace of hiring related to the MRJ program.
- The ability of MITAC, MITAC America, and AeroTEC to hire and retain employees for the MRJ program, including but not limited to highly-skilled individuals currently or formerly employed by Bombardier, has been reduced, with significant near-term and long-lasting effects on the companies.

**Response to Paragraph 91:** Bombardier specifically denies that any of the examples set forth in Paragraph 91 constitute anticompetitive conduct. Bombardier further denies any remaining allegations in Paragraph 91 because it lacks knowledge or information sufficient to form a belief about the truth, if any, of the allegations.

92. MITAC has also incurred antitrust injury in the form of harm to its reputation and goodwill caused by Bombardier's anticompetitive conduct, including its baseless claims that MITAC has misappropriated Bombardier's trade secrets. On information and belief, the reputation and goodwill of MITAC and MITAC America among current and potential MRJ customers and suppliers has been diminished as a result of Bombardier's conduct, with long lasting detrimental effects. Similarly, Bombardier's insinuation that the MRJ program is built on misappropriated trade secrets may create uncertainty among current and potential MRJ customers and suppliers about whether MITAC and MITAC America can be trusted business partners and whether the MRJ will be able to meet development and production deadlines and

enter the market notwithstanding the litigation. Both harm not only MITAC's reputation and goodwill, but also its sales.

**Response to Paragraph 92:** Bombardier denies the allegations in Paragraph 92.

93. Bombardier's relentless threats and demands that MITAC, MITAC America, and AeroTEC enter into unlawful no-poach agreements have also forced the companies to divert attention and resources that could have otherwise been committed to the MRJ program, including through the retention of outside counsel and mounting legal fees and costs associated with responding to Bombardier's baseless demands and legal actions.

**Response to Paragraph 93:** Bombardier denies that it undertook any action either prior to, or during this litigation, that is baseless, anticompetitive, improper, or illegal. Bombardier denies any remaining allegations in this paragraph because it lacks knowledge or information sufficient to form a belief about the truth, if any, of the allegations.

94. The effects of Bombardier's predatory scheme harm competition, regional jet purchasers, aerospace engineers, and MITAC. These harms are the types that antitrust laws were designed to prevent and those harms flow directly from that which makes Bombardier's conduct unlawful. Bombardier's practices are not reasonably necessary to accomplish any significant procompetitive benefit.

**Response to Paragraph 94:** Bombardier denies that it has engaged in a "predatory scheme" or harmful and unlawful conduct of the kind envisioned by antitrust laws. Bombardier denies the remaining allegations in this paragraph because it lacks knowledge or information sufficient to form a belief about the truth, if any, of the allegations.

## **COUNTERCLAIM I: ATTEMPTED MONOPOLIZATION IN VIOLATION OF THE SHERMAN ACT, 15 U.S.C. § 2**

95. MITAC realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

1           **Response to Paragraph 95:**           Bombardier fully restates and incorporates by  
2 reference its responses to Paragraphs 1 through 94 above.

3           96.     Bombardier has market power in the Regional Jet Market and has a dangerous  
4 probability of obtaining monopoly power.

5           **Response to Paragraph 96:**           Bombardier denies the allegations in Paragraph  
6 96.

7           97.     Bombardier has engaged in a scheme to expand its market power in the  
8 Regional Jet Market, to the detriment of competition, purchasers of regional jets, aerospace  
9 engineers, and MITAC.

10          **Response to Paragraph 97:**           Bombardier denies the allegations in Paragraph  
11 97.

12          98.     Bombardier's anticompetitive and exclusionary conduct includes its ongoing  
13 actions to impede or delay the development, certification, and sale of the MRJ by (1) levying  
14 baseless threats at MITAC, MITAC America, MHI, AeroTEC, and those companies' current  
15 and prospective employees in order to restrict the free flow of skilled labor necessary to the  
16 development and certification of the MRJ; (2) making threats against its own employees to  
17 deter them from accepting employment on the MRJ program; (3) attempting to coerce  
18 MITAC, MITAC America, MHI, and AeroTEC to enter per se unlawful no-poaching  
19 agreements in order to restrict recruitment and hiring activities in support of the MRJ  
20 program; (4) threatening the long-standing supply relationship between MHI and Bombardier  
21 in an attempt to achieve its illicit ends; and (5) initiating this litigation in an effort to delay the  
22 MRJ program and undermine sales of the MRJ. In furtherance of this scheme, Bombardier has  
23 engaged in a pattern of threats of litigation without regards to the merits and for the purpose  
24 of injuring MITAC, MITAC America, AeroTEC, and competition in the Regional Jet Market.  
25 Bombardier has also threatened and filed litigation against MITAC, MITAC America,  
26 AeroTEC, and former Bombardier employees that is objectively baseless and subjectively  
27 intended to interfere with MITAC, MITAC America, and AeroTEC's ability to compete.



1           **Response to Paragraph 98:**           Bombardier admits that it has filed litigation  
2 against MITAC, MITAC America, AeroTEC, and former Bombardier employees, but  
3 Bombardier denies it has undertaken any anticompetitive or exclusionary conduct, including  
4 but not limited to any of the acts enumerated in Paragraph 98. Bombardier denies the  
5 remaining allegations in Paragraph 98.

6           99.     Bombardier undertook the anticompetitive and exclusionary conduct alleged  
7 herein with the specific intent to acquire monopoly power in the Regional Jet Market.

8           **Response to Paragraph 99:**           Bombardier denies the allegations in Paragraph  
9 99.

10          100.    As evidenced by Bombardier's market share and the dynamics of the Regional  
11 Jet Market, including the significant barriers to entry to the Regional Jet Market, there is a  
12 dangerously high probability that Bombardier's scheme to impede competition from the MRJ  
13 and monopolize the Regional Jet Market will succeed.

14          **Response to Paragraph 100:**       Bombardier denies the allegations of  
15 Paragraph 100.

16          101.    Bombardier's conduct has no efficiency or procompetitive benefit or  
17 justification, the anticompetitive effects of its conduct outweigh any purported procompetitive  
18 justifications, and Bombardier could reasonably achieve any purported procompetitive goals  
19 through less restrictive alternatives.

20          **Response to Paragraph 101:**       Bombardier denies the allegations of  
21 Paragraph 101.

22          102.    Bombardier's conduct constitutes attempted monopolization in violation of  
23 Section 2 of the Sherman Act, 15 U.S.C. § 2.

24          **Response to Paragraph 102:**       Bombardier denies the allegations of Paragraph  
25 102.

103. As a direct and proximate result of the unlawful conduct of Bombardier in furtherance of the violations alleged, MITAC has been injured in its business and property in an amount to be proved at trial and to be automatically trebled, as provided by 15 U.S.C. § 15.

**Response to Paragraph 103:** Bombardier denies the allegations of Paragraph 103.

104. MITAC is also entitled to recover from Bombardier the cost of suit, including a reasonable attorney's fee, as provided by 15 U.S.C. § 15.

**Response to Paragraph 104:** Bombardier denies the allegations of Paragraph 104.

**COUNTERCLAIM II: ATTEMPTED MONOPOLIZATION IN VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.040**

105. MITAC realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

**Response to Paragraph 105:** Bombardier fully restates and incorporates by reference its responses to Paragraphs 1 through 104 above.

106. Bombardier has market power in the Regional Jet Market and has a dangerous probability of obtaining monopoly power.

**Response to Paragraph 106:** Bombardier denies the allegations in Paragraph 106.

107. Bombardier has engaged in a scheme to expand its market power in the Regional Jet Market, to the detriment of competition, purchasers of regional jets, aerospace engineers, and MITAC.

**Response to Paragraph 107:** Bombardier denies the allegations in Paragraph 107.

108. Bombardier's anticompetitive and exclusionary conduct includes its ongoing actions to impede or delay the development, certification, and sale of the MRJ by (1) levying baseless threats at MITAC, MITAC America, MHI, AeroTEC, and those companies' current

1 and prospective employees in order to restrict the free flow of skilled labor necessary to the  
 2 development and certification of the MRJ; (2) making threats against its own employees to  
 3 deter them from accepting employment on the MRJ program; (3) attempting to coerce  
 4 MITAC, MITAC America, MHI, and AeroTEC to enter per se unlawful no-poaching  
 5 agreements in order to restrict recruitment and hiring activities in support of the MRJ  
 6 program; (4) threatening the long-standing supply relationship between MHI and Bombardier  
 7 in an attempt to achieve its illicit ends; and (5) initiating this litigation in an effort to delay the  
 8 MRJ program and undermine sales of the MRJ. In furtherance of this scheme, Bombardier has  
 9 engaged in a pattern of threats of litigation without regards to the merits and for the purpose  
 10 of injuring MITAC, MITAC America, AeroTEC, and competition in the Regional Jet Market.  
 11 Bombardier has also threatened and filed litigation against MITAC, MITAC America,  
 12 AeroTEC, and former Bombardier employees that is objectively baseless and subjectively  
 13 intended to interfere with MITAC, MITAC America, and AeroTEC's ability to compete.

14 **Response to Paragraph 108:** Bombardier admits that it has filed litigation  
 15 against MITAC, MITAC America, AeroTEC, and former Bombardier employees, but  
 16 Bombardier denies it has undertaken any anticompetitive and exclusionary conduct, including  
 17 but not limited to any of the acts enumerated in Paragraph 108. Bombardier denies the  
 18 remaining allegations in Paragraph 108.

19 109. Bombardier undertook the anticompetitive and exclusionary conduct alleged  
 20 herein with the specific intent to acquire monopoly power in the Regional Jet Market.

21 **Response to Paragraph 109:** Bombardier denies the allegations in Paragraph  
 22 109.

23 110. As evidenced by Bombardier's market share and the dynamics of the Regional  
 24 Jet Market, including the significant barriers to entry to the Regional Jet Market, there is a  
 25 dangerously high probability that Bombardier's scheme to impede competition from the MRJ  
 26 and monopolize the Regional Jet Market will succeed.  
 27

1           **Response to Paragraph 110:**           Bombardier denies the allegations of  
2 Paragraph 110.

3           111. Bombardier's conduct has no efficiency or procompetitive benefit or  
4 justification, the anticompetitive effects of its conduct outweigh any purported procompetitive  
5 justifications, and Bombardier could reasonably achieve any purported procompetitive goals  
6 through less restrictive alternatives.

7           **Response to Paragraph 111:**           Bombardier denies the allegations of  
8 Paragraph 111.

9           112. Bombardier's conduct constitutes attempted monopolization in violation of  
10 RCW 19.86.040.

11           **Response to Paragraph 112:**           Bombardier denies the allegations of Paragraph  
12 112.

13           113. As a direct and proximate result of the unlawful conduct of Bombardier in  
14 furtherance of the violations alleged, MITAC has been injured in its business and property in  
15 an amount to be proved at trial and, in the Court's discretion, to be increased up to an amount  
16 not to exceed three times the actual damages sustained, as provided by RCW 19.86.090.

17           **Response to Paragraph 113:**           Bombardier denies the allegations of Paragraph  
18 113.

19           114. MITAC is also entitled to recover from Bombardier the cost of suit, including  
20 a reasonable attorney's fee, as provided by RCW 19.86.090.

21           **Response to Paragraph 114:**           Bombardier denies the allegations of  
22 Paragraph 114.

23           **COUNTERCLAIM III: PROPOSAL FOR AN ARRANGEMENT TO VIOLATE THE**  
24           **WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.030**

25           115. MITAC realleges and incorporates by reference the allegations set forth in the  
26 preceding paragraphs as though fully set forth herein.  
27

1           **Response to Paragraph 115:**           Bombardier   fully   restates   and  
2 incorporates by reference its responses to Paragraphs 1 through 114 above.

3           116.   Bombardier proposed (and demanded) that MITAC agree to cease all  
4 recruitment and hiring of Bombardier employees.

5           **Response to Paragraph 116:**           Bombardier   denies   the   allegations   of  
6 Paragraph 116.

7           117.   If consummated, Bombardier's proposed no-poaching agreement would have  
8 constituted a per se violation of RCW 19.86.030, which prohibits every contract, combination,  
9 or conspiracy in restraint of trade or commerce. In any event, the proposed agreement had no  
10 legitimate business justification, but instead was proposed and demanded by Bombardier in  
11 order to reduce competition in the Regional Jet Market by restricting hiring related to the  
12 MRJ. There is no efficiency-enhancing, procompetitive justification for the proposal. Any  
13 purported procompetitive justifications or effects are outweighed by the anticompetitive  
14 impact, and there are less restrictive alternatives available to achieve any purported  
15 procompetitive impact.

16           **Response to Paragraph 117:**           Bombardier   denies   the   allegations   of  
17 Paragraph 117.

18           118.   As a direct and proximate result of its refusal to accede to Bombardier's  
19 proposal, MITAC has been injured in its business and property in an amount to be proved at  
20 trial and trebled pursuant to RCW 19.86.090. In particular, MITAC has been forced to incur  
21 the burden and expense of responding to and defending against Bombardier's repeated threats  
22 and demands, including the attorneys' fees and costs incurred in relation to the instant  
23 litigation, and to otherwise divert away attention and resources that could have otherwise been  
24 committed to the MRJ program.

25           **Response to Paragraph 118:**           Bombardier denies the allegations of Paragraph  
26 118.

119. MITAC is also entitled to recover from Bombardier the cost of suit, including a reasonable attorney's fee, as provided by RCW 19.86.090.

**Response to Paragraph 119:** Bombardier denies the allegations of Paragraph 119.

**COUNTERCLAIM IV: UNFAIR COMPETITION IN VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.020**

120. MITAC realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

**Response to Paragraph 120:** Bombardier fully restates and incorporates by reference its responses to Paragraphs 1 through 119 above.

121. Bombardier's conduct constitutes unfair methods of competition and unfair acts or practices within the meaning of RCW 19.86.020 because the conduct: (1) offends public policy as it has been established by statutes, the common law, or otherwise, including state and federal laws that prohibit anticompetitive conduct; (2) is oppressive in that it seeks to prevent or limit lawful competition; and/or (3) causes substantial injury to competitors (e.g. MITAC, MITAC America, and AeroTEC), other businesspersons (e.g., airlines and other purchasers of regional jets who may pay more for regional jets due to the reduction in competition in the market for regional jets), and/or consumers (e.g., individuals who may pay more for airplane tickets if airplane manufacturers can charge airlines more for jets due to the reduction of competition in the market for regional jets).

**Response to Paragraph 121:** Bombardier denies the allegations of Paragraph 121.

122. Bombardier's conduct took place in the course of trade or commerce because Bombardier's threats and demands were issued by Bombardier in the course of its business operations, were directed towards other companies and individuals involved in the manufacture of regional jets, and were related to efforts to compete with Bombardier in the market for regional jets.

1           **Response to Paragraph 122:**           Bombardier denies the allegations of  
2 Paragraph 122.

3           123. Bombardier's conduct is injurious to the public interest, within the meaning of  
4 RCW 19.86.093(1), because it violates statutes that incorporate the Consumer Protection Act,  
5 including but not limited to RCW 19.86.020, 19.86.030, and 19.86.040.

6           **Response to Paragraph 123:**           Bombardier denies the allegations of  
7 Paragraph 123.

8           124. Bombardier's conduct is injurious to the public interest within the meaning of  
9 RCW 19.86.093(3)(a) because it has injured persons other than MITAC, including MITAC  
10 America, MHI, AeroTEC, the current and former Bombardier employees who were the  
11 recipients of Bombardier's threats and allegations, and other individuals, including but not  
12 limited to current and former Bombardier employees, among others, who were deterred or  
13 dissuaded from seeking employment related to the MRJ.

14           **Response to Paragraph 124:**           Bombardier denies the allegations of Paragraph  
15 124.

16           125. Bombardier's conduct is injurious to the public interest within the meaning of  
17 RCW 19.86.093(3)(b) and RCW 19.86.093(3)(c) because it had the capacity, and still has the  
18 capacity, to injure other persons, including current and former Bombardier employees who  
19 were deterred or dissuaded from seeking employment related to the MRJ, as well as other  
20 companies or individuals who may be the recipients of similarly improper threats,  
21 accusations, and invitations to collude in the future.

22           **Response to Paragraph 125:**           Bombardier denies the allegations of Paragraph  
23 125.

24           126. As a direct and proximate result of Bombardier's conduct, MITAC has been  
25 injured in its business and property in an amount to be proved at trial and, in the Court's  
26 discretion, to be increased up to an amount not to exceed the greater of three times the actual  
27 damages sustained or \$25,000, as provided by RCW 19.86.090.



1           **Response to Paragraph 126:**       Bombardier   denies   the   allegations   of  
2 Paragraph 126.

3           127.   MITAC is also entitled to recover from Bombardier the cost of suit, including  
4 a reasonable attorney's fee, as provided by RCW 19.86.090.

5           **Response to Paragraph 127:**       Bombardier   denies   the   allegations   of  
6 Paragraph 127.

**BOMBARDIER'S AFFIRMATIVE DEFENSES**

Without prejudice to the denials set forth in its Answer, without admitting any averments of the Counterclaims not otherwise admitted, and without undertaking any of the burdens imposed by law on MITAC, Bombardier asserts the following separate defenses to the Counterclaims:

**FIRST AFFIRMATIVE DEFENSE  
(Failure to State a Claim upon Which Relief Can Be Granted)**

The Counterclaims fail to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

**SECOND AFFIRMATIVE DEFENSE  
(Equitable Defenses)**

The Counterclaims are barred by the doctrines of acquiescence, estoppel, laches, waiver, unclean hands, unjust enrichment, and/or other equitable defenses that will find support in evidence uncovered during discovery in this action.

**THIRD AFFIRMATIVE DEFENSE  
(Adequacy of Remedy at Law)**

MITAC is not entitled to any injunctive relief sought, either preliminarily or permanently, because any injury to MITAC is neither immediate nor irreparable, MITAC has an adequate remedy at law, the balance of hardships favors no injunctive relief, and the public interest favors no injunctive relief.

**FOURTH AFFIRMATIVE DEFENSE  
(Statute of Limitations)**

The Counterclaims are barred, in whole or in part, by the applicable statute(s) of limitations.

**FIFTH AFFIRMATIVE DEFENSE  
(Independent Duty/Economic Loss)**

The Counterclaims are barred by the doctrines of Independent Duty and/or Economic Loss.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Lack of standing)**

The Counterclaims are barred because MITAC lacks standing to assert injury based on Bombardier's alleged anticompetitive conduct.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Lawful Competition)**

The Counterclaims are barred by the doctrine of lawful competition.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Unreasonable Restraint Of Trade)**

The Counterclaims are barred, in whole or in part, because the relief sought by MITAC would constitute an unreasonable restraint of trade.

**NINTH AFFIRMATIVE DEFENSE**  
**(No Damages)**

MITAC is entitled to no relief because MITAC has sustained no damage as a result of Bombardier's activities.

**TENTH AFFIRMATIVE DEFENSE**  
**(Failure to Mitigate Damages)**

MITAC is entitled to no relief because MITAC has failed to mitigate its damages allegedly resulting from Bombardier's purported misconduct.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(Contributory Negligence)**

MITAC is entitled to no relief because any damages allegedly sustained as a result of the conduct alleged are in fact proximately caused, in whole or in part, by MITAC's own negligent conduct in attempting to develop and certify the MRJ.

**ADDITIONAL AFFIRMATIVE DEFENSES**

Bombardier reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

Dated this 11th day of June, 2019.

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>

s/John D. Denkenberger

John D. Denkenberger, WSBA No.: 25,907

Brian F. McMahon, WSBA No.: 45,739

Jeffrey E. Danley, WSBA No.: 52,747

Christensen O'Connor Johnson Kindness<sup>PLLC</sup>

1201 Third Avenue, Suite 3600

Seattle, WA 98101-3029

Telephone: 206.682.8100

Fax: 206.224.0779

E-mail: john.denkenberger@cojk.com,

brian.mcmahon@cojk.com,

jeffrey.danley@cojk.com, litdoc@cojk.com

*Attorneys for Plaintiff Bombardier Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 11, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jerry A. Riedinger	Mack H. Shultz	Mary Z. Gaston
PERKINS COIE LLP	PERKINS COIE LLP	PERKINS COIE LLP
Email:	Email:	Email:
JRiedinger@perkinscoie.com	MShultz@perkinscoie.com	MGaston@perkinscoie.com
docketsea@perkinscoie.com	docketseapl@perkinscoie.com	docketsea@perkinscoie.com
lshaw@perkinscoie.com	sbilger@perkinscoie.com	jstarr@perkinscoie.com
sporter@perkinscoie.com		

James Sanders	Shylah R. Alfonso
PERKINS COIE LLP	PERKINS COIE LLP
Email:	Email:
JSanders@perkinscoie.com	SAlfonso@perkinscoie.com
RBecken@perkinscoie.com	docketsea@perkinscoie.com
docketsea@perkinscoie.com	
jdavenport@perkinscoie.com	

Attorneys for Mitsubishi Aircraft Corporation and Mitsubishi Aircraft Corporation America Inc.

Richard J. Omata	Mark A. Bailey
KARR TUTTLE CAMPBELL	KARR TUTTLE CAMPBELL
Email: romata@karrtuttle.com	Email: mbailey@karrtuttle.com
jnesbitt@karrtuttle.com	jsmith@karrtuttle.com
swatkins@karrtuttle.com	mmunhall@karrtuttle.com
	sanderson@karrtuttle.com

Daniel T. Hagen  
KARR TUTTLE CAMPBELL  
Email: dhagen@karrtuttle.com  
ksagawinia@karrtuttle.com

Attorneys for Aerospace Testing Engineering & Certification Inc., Michel Korwin-Szymanowski, Laurus Basson, and Cindy Dornéval

1 James P. Savitt Jacob P. Freeman  
2 SAVITT BRUCE & SAVITT BRUCE &  
3 WILLEY LLP WILLEY LLP  
4 Email: jsavitt@sbwLLP.com Email:  
eservice@sbwllp.com jfreeman@sbwLLP.com

5 Attorneys for Marc-Antoine Delarche and Keith Ayre

6 s/John D. Denkenberger

7 John D. Denkenberger, WSBA No.: 25,907

8 Brian F. McMahon, WSBA No.: 45,739

9 Jeffrey E. Danley, WSBA No.: 52,747

10 Christensen O'Connor Johnson Kindness<sup>PLLC</sup>

11 1201 Third Avenue, Suite 3600

12 Seattle, WA 98101-3029

13 Telephone: 206.682.8100

14 Fax: 206.224.0779

15 E-mail: john.denkenberger@cojk.com,

16 brian.mcmahon@cojk.com,

17 jeffrey.danley@cojk.com, litdoc@cojk.com

18 *Attorneys for Plaintiff Bombardier Inc.*